

IN THE CIRCUIT COURT OF THE UNITED STATES,
NORTHERN DIVISION OF THE NORTHERN DISTRICT OF ILLINOIS.

American Graphophone Co.,)
v.) In Equity.
Leon F. Douglass)

25199

-- BILL OF COMPLAINT.

THE AMERICAN GRAPHOPHONE COMPANY, a corporation duly organized under the laws of the State of West Virginia, and having its principal office in Washington, in the District of Columbia, brings this its bill of complaint against Leon F. Douglass, a resident of Chicago in the State of Illinois, and an inhabitant of the Northern Division of the Northern Judicial District of said State.

I.

And thereupon your orator complains and says that on or about the first day of August, 1897, said Leon F. Douglass entered the employ of your orator as the manager of the Chicago office, of the Columbia Phonograph Company, your orator's selling agent, and continued in that capacity until about the first day of March, 1898; that during the period of employment of said Douglass as aforesaid he was permitted and encouraged by your orator to devote a portion of his time to experimenting with a view to making and developing inventions relating to the art of recording and reproducing sounds for your orator's benefit; that on or about the ^{Said} first day of March, 1898, said Douglass having expressed a desire to be relieved of the duties of office management, and to devote his entire time and effort to experimentation and invention, the terms of his employment were modified, to take effect said first day of March 1898; and that under said modified terms said Douglass was to

receive a salary of \$5,000. per annum, all necessary expenditures in connection with such work to be paid by your orator, all inventions made by said defendant to be owned by your orator, and all applications for patents filed by said defendant to be assigned to your orator.

II.

And your orator further shows that it equipped a laboratory for use of said Douglass with tools, machinery and appliances, at large expense, that it paid his salary and expenses and the salaries of his assistants and faithfully executed and fulfilled all the terms of its agreement with said defendant; and that your orator was and is entitled to an assignment from said defendant of any patent or application for patent for inventions made or developed by said Douglass during the period of his employment by your orator.

III.

And further your orator shows that although said Douglass has filed applications for patents based on the results of work done by him while in the employ of your orator as aforesaid, he has not assigned to your orator any invention, application or patent whatever, but although requested so to do has refused and still refuses.

IV.

And further your orator shows ~~that~~^{at} said Douglass filed on February 14, 1898, an application for a patent for improvement in talking-machines for which a patent was issued to him November 8, 1898, numbered 613,670, to which patent your orator is justly entitled; and further on information and belief your orator alleges that in the early part of the year 1899, at a date unknown to your orator, said Douglass filed an application for a patent for an invention which he claims to have made during the period of his employment as aforesaid, said

application being substantially for a talking machine or graphophone having a mandrel of large diameter (about six inches) combined with means for rotating the same at the customary speed of one hundred and twenty revolutions per minute, whereby the volume and distinctness of the reproduced sounds are increased; and that your orator is unable to give a specific reference to the date and serial number of said application, for the reason that said Douglass, in disregard and fraud of your orator's rights, refuses to disclose the same to your orator.

V.

And your orator further avers that the matter here in dispute is of a value greater than two thousand dollars exclusive of interest and costs.

And forasmuch as your orator can have no relief save in this Honorable Court your orator prays as follows:

1. That said defendant be directed by a decree of this Honorable Court to assign, convey, and transfer to your orator the entire right, title and interest, free from all lien or encumbrance, in and to the said patent and application for patent.
2. That pending the hearing and determination of this cause said defendant be enjoined from parting with said patent or said application for patent, or either of them, or with any interest therein, and from granting any right or license thereto, or in any manner impairing the rights of your orator in respect thereto.
3. That said defendant be required to account for and pay to your orator all his gains and profits from the manufacture and sale of the things covered by said patent and application.
4. That your orator may have such other and further relief

as the equity of the case may require, and as to this Court may seem just.

To the end therefore that the defendant may, if he can, show why your orator should not have the relief hereby prayed, and may full, true and direct answer make - but not under oath, answer under oath being expressly waived - according to the best and utmost of his knowledge, information, remembrance and belief, to the several matters herein before averred and set forth, as fully and particularly as if the same were repeated, paragraph by paragraph, and said defendant thereto specifically interrogated;

May it please your Honors to grant unto your orator a writ of subpoena ad respondendum, issuing out of and under the seal of this Honorable Court, directed to said defendant, Leon F. Douglass, commanding him to appear and make answer to this bill of complaint, and to perform and abide by such order and decree herein as to this Court shall seem just.

And your orator will ever pray.

American Graphophone Co.

by Edmund D. Carter
President.

Circuit Court of the United States, Northern District of Illinois.

In Equity.

American Graphophone Company,	I
	I
vs	-I-
	I
Leon F. Douglass.	I

The answer of Leon F. Douglass to the bill of complaint of the American Graphophone Company:

This defendant, now and at all times hereafter saving and reserving unto himself all benefits and advantages of exception which can or may be had or taken to the many errors, uncertainties and other imperfections in the said complainant's bill of complaint contained, for answer thereto, or to so much and such parts thereof as he is advised is material or necessary to make answer unto, answering, says:

I.

That as to whether the complainant is a corporation organized and existing under the laws of the State of West Virginia, as alleged in said bill of complaint, this defendant does not know, and is not informed save by said bill, and therefore leaves the complainant to make such proof thereof as it may be advised is material.

II.

This defendant admits that on or about the first day of August, 1897, he entered the employ of the complainant as manager of the Chicago office of the Columbia Phonograph Company, the complainant's selling agent, and continued in that capacity until about the first day of March, 1898, when the terms of the employment were modified, *not however as alleged at the request of this defendant,* and this defendant was relieved of the management of said office and allowed to devote his entire time and

effort to experimentation and invention, and that under such modified arrangement this defendant was to receive a salary of Five Thousand Dollars per annum, all necessary expenditures in connection with the work to be paid by the complainant, and all inventions made by the defendant while so employed to be owned by the complainant, and all applications for patents upon such inventions filed by this defendant to be assigned to the complainant.

III.

This defendant, further answering, admits that the complainant equipped a laboratory for use of this defendant, with tools, machinery and appliances at some, though not large, expense; that it paid this defendant's salary and expenses and the salaries of his assistants, and that it executed and fulfilled the terms of the employment upon its part. But this defendant denies that the complainant is entitled to any assignment from this defendant of any patent, or application for patent, for any inventions made by this defendant, except such as were made during the period of his employment for experimentation and invention, to-wit: for the period between the first day of March, 1898, and the *first day of October 1898* when defendant's employment ceased.

IV.

This defendant denies that he has filed any applications for patents based on the results of work done by him while in the employ of the complainant as an experimenter and inventor, and avers that he has not been requested by the complainant to file any application for patent thereon.

V

This defendant further says that he has been ready at all times, and is now ready to make application for letters patent on

all inventions made by him while so employed as experimenter and inventor, and to assign the same to the complainant, and has never declined or refused so to do.

VI.

The defendant, further answering admits that he filed an application in the Patent Office on the 14th. day of February, 1893 for an improvement in talking machines, upon which a patent was issued on November 8, 1893, No. 613,670. But this defendant denies that the complainant is entitled to said patent or to the invention forming the subject matter thereof, because he says the invention was neither made or perfected during this defendant's said employment by the complainant. This defendant further says that it is not in his power to assign said patent to complainant, because the invention was assigned by him to Charles Dickinson on the 7th. day of February, 1893, before the application for said patent was filed; that said patent in pursuance to said assignment was issued to said Dickinson as the assignee of this defendant, in conformity to the law, and that said Dickinson still owns the same, as this defendant is informed and believes.

VII.

Defendant further says that he had no interest in said patent at the time this suit was brought, and has none now, and prays the same benefit of this defense as though the same had been set up by plea.

VIII.

This defendant, further answering admits that in the early part of the year 1899 he filed an application for patent on talking machine having a mandril of large diameter combined with means for rotating the same at the customary speed of 120 revolutions per minute. But this defendant denies that he ever claimed to have made said invention during the period of his said employ-

ment by complainant, and denies that said invention was made while he was employed by the complainant as either manager or as experimenter and inventor, and he avers on the contrary that the same was made by him long prior to his said employment alleged in said bill, and is not an invention which he is under any obligation to assign to the complainant.

IX.

Wherefore, and for the causes aforesaid, this defendant wholly denies the equity of complainant's bill herein, and all manner of wrongful and unlawful acts wherewith in the said bill of complaint he is charged, and further, denies the right of the complainant to the relief, and each and every part thereof, alleged against this defendant in said bill of complaint, and submits that he should not be compelled to make any other or further answer than that herein contained.

All of which matters and things this defendant is ready and will to aver, maintain and prove as this Honorable Court shall direct, and said defendant prays the same benefit from this answer as if he had demurred to the said bill where a demurrer would have been proper, and pleaded to the said bill where a plea would have been proper, and humbly prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

Leon T. Douglas
by *Munday Evans & Adcock*
his solicitors

Munday Evans & Adcock
Solrs & of counsel for Def

IN THE CIRCUIT COURT OF THE UNITED STATES
FOR THE NORTHERN DIVISION OF THE
NORTHERN DISTRICT OF ILLINOIS.

CHICAGO, June 5th, 1899.

Present: Honorable C. C. Kohlsaat, District Judge.

American Graphophone Company :
)
 vs. : In Equity.
)
 Leon F. Douglass. :

O R D E R.

On motion of Taylor E. Brown, Esq., Complainant's Counsel, and the Court being duly advised in the premises, it is

O R D E R E D

That pending the hearing and determination of this cause the defendant, Leon F. Douglass, be and he is hereby enjoined from parting with Letters Patent of the United States, No. 613,670, issued to him and dated November 8, 1898, for Improvements in Talking Machines, and from parting with an invention in Talking Machines or Graphophones, having a mandrel of large diameter, about six inches, combined with means for rotating the same at the customary speed of 120 revolutions per minute, whereby the volume and distinctness of the reproduced sounds are increased, substantially as disclosed in an application filed by said Douglass in the United States Patent Office, or with either of them, or with any interest therein, or from contracting to part with said patent, application for patent, or inventions, or either of them, or from

granting any right or license thereto, or from in any manner altering the present status of the title thereto or impairing the rights claimed by the complainant thereto, until the further order of this Court.

Inter June 5 1899
Kahn

U. S. District Judge.

IN THE CIRCUIT COURT OF THE UNITED STATES
FOR THE NORTHERN DIVISION OF THE
NORTHERN DISTRICT OF ILLINOIS.

American Graphophone Company,	:	
Complainant,	:	
vs.	:	In Chancery,
	:	
Leon F. Douglass,	:	No. 25,199.
Defendant.	:	

N O T I C E.

To-
Munday, Evarts & Adcock,
#906 Marquette Building,
Chicago, Illinois.
Solicitors for Defendant.
Gentlemen:-

Please take notice that we shall proceed to take the deposition de bene esse under the 67th Rule of the Supreme Court for Courts of Equity as amended, and in accordance with the statutes of the United States in such case made and provided and in pursuance of the rules and practice of this Court of E. D. Easton, of Arcola, New Jersey, who resides more than one hundred miles from Chicago, Illinois, where the Court at which the above entitled cause will be tried is to be held, and more than one hundred miles from any place at which a Circuit Court of the United States for the Northern Division of the Northern District of Illinois is appointed to be held by law, to be read in evidence at the final hearing of the above entitled cause on behalf of the complainant, (the reason for taking such deposition of said E. D. Easton being because he resides more than one hundred miles from the place of trial, as stated,)), before C. E. Davidson, a Notary Public in and for the City and County of New York in said State of New

York, who is not of counsel nor interested in this cause, at the office of the American Graphophone Company, No. 141 Broadway, New York City, in said State, on Thursday, the 23rd day of November, beginning at the hour of two P. M.

We desire the evidence to be adduced in this case to be taken orally. You are invited to attend and cross examine the witness produced.

Dated Chicago, Illinois, this 16th day of November, 1899.

Very respectfully,

Pool & Brown
Solicitors for Complainant.

State of Illinois, :
County of Cook. : ss.

W. L. Hall, of lawful age, being first duly sworn, upon oath deposes and says that he served the foregoing notice, by delivering a true copy thereof personally to Edmund Adcock Esq., one of the firm of Munday, Everts & Adcock, Defendant's Solicitors, at their offices #906 Marquette Building, Chicago, Illinois, between four and five o'clock, the 16th day of November, 1899.

William L. Hall

Subscribed and sworn to before me this

16th day of November, A. D. 1899.

Bertha A. Rice

Notary Public.

IN THE CIRCUIT COURT OF THE UNITED STATES
FOR THE NORTHERN DIVISION OF THE NORTHERN
DISTRICT OF ILLINOIS.

AMERICAN GRAPHOPHONE COMPANY

Complainant

-against-

LEON F. DOUGLASS,

Defendant.

)
)
) IN CHANCERY
)
)
)

No. 25,199.
✓

PROOFS for final hearing on behalf of complainant taken de bene esse, under the Rules of the Supreme Court, a court of Equity, and in accordance with the Statutes of the United States in such case made and provided, before C. E. Davidson, a Notary Public in and for the County and State of New York, at the office of the American Graphophone Company, 141 Broadway, New York.

Met pursuant to notice this 23rd day of November, 1899; Present: Philip Mauro, Esq.,
On behalf of complainant;
Howard W. Hayes, Esq., and
Edmund Adcock, Esq.,
on behalf of defendant.
The defendant Mr. Douglass also
appeared in person.

Complainant's counsel offers in evidence a certified copy of the file wrapper and contents in the matter of an application for patent by Leon F. Douglass, filed February 4, 1899, Serial No. 704,508, to be marked "Complainant's Exhibit File and Contents Douglass Application."

Counsel for defendant objects to the taking or offering of any evidence under this



notice here in New York, on the ground that the same is irregular, contrary to the rules of the court, and contrary to Chancery proceedings generally, and because there is no authority at law for the introduction of documentary evidence de bene esse, or the taking of depositions de bene esse in Chancery causes, and especially objects to the exhibit just introduced for the above reasons.

Thereupon EDWARD D. EASTON, a witness produced on behalf of the complainant, being first duly sworn, deposes and says in answer to questions by complainant's counsel, as follows:

Q.1. Please state your name, age, residence and occupation?

A. Edward D. Easton, age 43, residence Ar cola, New Jersey, occupation, President of the American Graphophone Com pany.

~~x2 x2 x2 x2 x2 x2 x2~~ Counsel for defendant objects to the taking of the deposition of this witness here in New York, under the notice heretofore given, for the reason that ~~the same~~ such proceeding is contrary to the rules of the court and to the rules for chancery proceedings generally, and because there is no authority at law for the taking of depositions de bene esse in chancery causes, and further

because this witness is the President of the complainant company, and further because it now appears that he does not reside in New York.

Q.2. Are you acquainted with the defendant, Leon F. Douglass, and if so, from what time?

A. I am. I met him first in the early part of 1892.

Q.3. Please state what your relations have been with the defendant from that time forward, both business relations and personal, and state whether or not they were continuous ?

A. Our relations have been both in a business and a personal way continuous from the time of our meeting until ~~near~~ near the present time.

Q.4. Please state specifically what business relations have subsisted during that time between the defendant and yourself?

A. Shortly after our first meeting Mr Douglass was employed by the American Graphophone Co., through my instrumentality. Later, he was an independent dealer buying from the American Graphophone Company; still later he was Manager of the Chicago office of the Columbia Phonograph Company, of which I am also President; he left that employment to become an experimenter for the American Graphophone Co. He ~~retained~~ retained the last named position until I think September 30, 1898.

Q.5. Can you give the date of the employment of

Mr. Douglas as an experimentalist by the complainant company?

A. Approximately February 1st, 1898.

Q.6. Did you fix the terms of his employment?

A. I did.

Q.7. If they were stated in writing, please read ~~them~~ into the record the paper by which they were defined.

Objected to as not the best evidence.

A. I hold in my hand a copy of a letter, dated February 3, 1898, which I addressed to Mr. Douglass, and which reads as follows:

Feb.3rd,1898.

"Dear Mr. Douglass:--

In yours of January 22nd, you leave to my decision, the question as to whether or not you shall do experimental work. I am sure this is the work nearest your heart, and therefore decide that you shall do it. In such work there must, of course, be failures; and all we expect is that you shall do your best. As to compensation, you will start with a salary of five thousand per year; and you may be sure that if your work entitles you to promotion, it will come, as it does to everybody else in our service who deserves well.

"As to your residence in Chicago, it will be all right for you to continue there. Should a change ever be necessary, we can take it up as a separate subject. As to what you need in the way of special equipment, that can also be a matter of consideration in detail. Any necessary expenditures in connection with your work, we would expect to bear. The contract of employment will be that the American Graphophone Company shall own the results of your work; and with all applications for patents there shall be assignments to the Company.

"I believe in view of all the circumstances, that it will be better for you and for the Company to have you go into this field. Further details will be arranged later; meantime go ahead as you have been doing.

Yours truly,

(sgd) E. D. Easton,
PRESIDENT."

Q.8 . Please state whether or not prior to the date of Mr. Douglass's employment by complainant as experimentalist, he ever communicated to you a plan of making sound records by using a blank of about six inches in diameter rotating at a speed of one hundred, or one hundred and twenty revolutions per minute?

A. He did not.

Q.9. State whether or not prior to that time Mr. Douglass was in the habit of communicating to you ideas he had with reference to the improvement of the talking machine, or not?

A. He was.

Without waiving the objections heretofore made counsel for defendant cross examines subject to the same.

CROSS EXAMINATION BY MR. BABCOCK.

XQ 10. How long have you been president of the American Graphophone Company?

A. Since April 8, 1895.

XQ 11. Prior to that time what connection had you with the American Graphophone Company?

A. I was elected a director of the American Graphophone Company in 1889, and with a short intermission continued to hold that office until the present time. I was General Manager of the American Graphophone Company from April 10, 1893, and still hold that position. I have been counsel for the American Graphophone Company since October 17, 1895. For a short time, beginning June 27, 1892

I was Secretary, and again, beginning May 13, 1893, I held that office for a short time. For a short time in 1892 I held an office entitled Director of Agencies. That position was created at the time of my employment and discontinued when my term of service expired, which was, as I recollect, in a very few months.

XQ 12. What is the object, Mr. Easton, of this suit?

A. To require the assignment to the American Graphophone Company of inventions made for the company by the defendant, and particularly application for patent filed February 4, 1899, as will better appear by the bill of complaint.

XQ 13. During what period of time do you claim and contend that inventions made by Mr. Douglass belong to and should be assigned by him to your company?

Objected to as not calling for statements of fact, but for statements of claims and contentions.

A. During the period of his employment.

XQ 14. By the American Graphophone Company, the complainant?

A. Yes.

XQ 15. As an Experimentalist?

A. That is a question of law on which I would not care to give an opinion in this connection.

XQ 16. When did the American Graphophone Company, the complainant, begin to pay him salary?

A. His salary as experimentalist for the American Graphophone Company began in February 1898.

XQ 17. Is it not the fact that it began March 1st, 1898?

A. You may be correct about that; I spoke from a copy of a letter dated February 3rd, which seemed to suggest that February was his first month.

XQ 18. You have stated that Mr. Douglass was in the habit of communicating to you ideas he had with reference to the improvement of the talking machine. Did you mean to state that he was in the habit of communicating to you all the ideas he had, in relation to the improvement of the talking machine?

A. I did not mean to take the responsibility of making such a statement.

XQ 19. During what period of time was he in the habit of communicating his ideas to you in reference to the improvement of the talking machine?

A. He made suggestions on this subject from time to time during our acquaintance, the last, I think, during his employment as experimentalist, which terminated in September 1898; but I would not be positive he made none after that date.

XQ 20. During the whole period of your acquaintance?

A. Yes.

XQ 21. Please state what ideas for the improvement of the talking machine he communicated to you which you may

now be able to recall?

A. I do not now recall any substantial suggestion; but the most important relatively will be found set forth in correspondence, and can be thus identified.

Adjourned until Friday, Nov. 24, 1899, 10 A.M.

New York, November 24th, 1899, 11 A.M.
Met pursuant to adjournment.
Present as before with the exception of
H. W. Hayes, Esq.

CROSS EXAMINATION OF E.D.EASTON CONTINUED.

XQ 22. Did Mr. Douglass also sometimes communicate his ideas relative to the improvements in talking machines, orally at personal interviews? or did he always communicate them by written correspondence or letter?

A. Often orally.

XQ 23. You have stated that he made no substantial suggestions, or rather that you do not recall any substantial suggestions which he made; what do you mean by this?

A. My previous answer seems to me to cover the present question.

XQ 24. What do you mean by "substantial"?

A. In that connection I mean an important and new suggestion.

XQ 25. Do you mean to state that he made no suggestions of substantial value, so far as you are able to recollect?

A. I do not mean by my previous answers to touch that question at all; I mean no more than I have said.

XQ 26. Please state what ideas for the improvement of the talking machine he communicated to you, substantial or unsubstantial, so far as you are able to recollect?

all
I mean ~~by~~ the ideas for the improvement of the talking machine; all ideas relating in any way to the talking machine business, manufacture or supplies, or things used in connection therewith?

A. My acquaintance with Mr. Douglass began because I understood he had a system of duplicating which it was then thought could be used. We discussed this subject in various forms in a period covering several years and he had a great deal to say on the subject. While he was experimentalist he made numerous suggestions, some of which afterwards took the form of models. I recall a slot machine and some modifications of our cheaper types of graphophone. Earlier I recollect his speaking of clock-work motors and of his work in that connection. These are all the points that occur to me on further reflection; but I do not mean to say there were not others.

XQ 27. Did Mr. Douglass ever communicate to you the idea of improving the talking machine by using a larger sound record blank, and explain to you that the larger the blank the better record could be got? or the invention forming the subject of the Douglass application which you have stated is the object of this suit, to compel him to assign to your company?

A. He stated, as many others have often before done, that a larger cylinder would hold more words or other recorded sound; he did not mention, so far as I now recall, any other gain. He made such a suggestion as applicable to the commercial graphophone on the theory that it would be convenient to dictators to have cylinders of larger capacity

this being in line with the common knowledge of those familiar with the art from the beginning. He did not ~~spaxxxakxx~~ speak of the suggestion as original.

XQ 28. You don't recollect that he ever suggested to you in any way, orally or by writing, that the record itself would be improved, and better reproductions result from using a record blank of larger diameter?

A. I am quite sure he did not, and am confirmed in this view by the surprise and amazement he expressed on first hearing what is known as the "Graphophone Grand". His bearing and remarks then indicated that the results were new to him; and our relations were such at that time that I feel certain he would have said so if this work was in line with any of his experiments or ideas.

XQ 29. When did Mr. Douglass first communicate to you the idea of using a larger sound record blank for any purpose?

A. I can say generally that it was during the period of his employment as an experimentalist and in a letter containing an official report of his work. I do not recall the date of the letter; but I do recall that the suggestion was one of several, all quite unimportant and none being emphasized by the writer.

XQ 30. You have no recollection of his ever communicating to you the idea of using a larger sound record, have you, on the talking machine, orally?

A. I have not.

XQ 31. You have no recollection of the subject

ever being discussed between you and Mr. Douglass orally?

A. I have not. Although I do not mean to say it was not.

XQ 32. Did Mr. Douglass ever suggest to you any dimensions, or to what extent he would increase the diameter of the blank?

A. I do not remember whether he did or not. We had ~~never~~ never on this subject any conversation which seemed to me important previous to the invention of the graphophone grand; and therefore what he said as to details, if he said anything, would not remain in my memory. We talked often and informally about almost everything of interest in the business.

XQ 33. In your last answer by "previous to the invention to the Graphophone Grand," do you mean previous to Mr. Douglass's invention of the Graphophone Grand?

A. I do not.

XQ 34. What do you mean?

A. I mean previous to the time when a laboratory model of the Graphophone Grand was shown to Mr. Douglass in our factory in Bridgeport, Connecticut, that model being the work of Mr. MacDonald. After that date the subject became important because of the value apparent in the invention. Before the appearance of this machine such was not the case.

XQ 35. By your last answer you have stated under oath that the date of the invention of the Graphophone Grand, by whomsoever it may have been invented, was at the particular date when Mr. Douglass saw a certain model; is that your understanding of the real facts?

Question objected to as placing a manifestly erroneous and absurd construction upon the statement of the witness.

A. It was not my intention to so testify, nor do I think the answer capable of such interpretation.

XQ 36. You are a lawyer, are you not, Mr. Easton?

A. I am.

XQ 37. You have been for years connected with the Graphophone Company, the complainant?

A. I have.

XQ 38. You have had a great deal of experience in patent litigation generally, including interference contests in the Patent Office?

A. We have had patent litigation ~~constantly~~ continuously.

XQ 39. Do you wish the court to understand that you are and were so ignorant of what invention is as to suppose that the date of invention is the date when a model embodying the invention was shown to a third person?

A. That may have been the date on which Mr. Douglass made the invention; I do not wish the court to think otherwise than in accordance with the facts; and I have not attempted to state when the invention of the Graphophone Grand ~~begin~~ in question was made by Mr. MacDonald.

XQ 40. You have already stated in answer to XQ 33 that by the phrase "previous to the invention of the Graphophone Grand"; you did not mean Mr. Douglass's invention of the Graphophone Grand.

Am I now to understand that by your statement, "previous to the invention of the Graphophone Grand" in your answer to XQ 33, you had in mind and meant Mr. MacDonald's alleged invention of the Graphophone Grand?

A. Yes. In order to make my point perfectly plain, I should say that this subject never had prominence until after that time, and therefore any talks that Mr. Douglass and I might have had as to a large cylinder, received no special attention, and made no substantial impression upon my memory for the reason, as I before stated, that it had been common talk that a larger cylinder was a means of obtaining a longer continuous record.

XQ 41. By substantial impression on your memory you mean lasting impression on your memory, do you not?

A. Yes.

XQ 42. Now, Mr. Easton, in your answer to XQ 33 you stated, "we had never on this subject any conversation which seemed to me important previous to the invention of the Graphophone Grand", and you have stated in answer to XQ 40 that in the above you had in mind and meant Mr. MacDonald's invention or alleged invention of the Graphophone Grand. Will you now please state the date of Mr. MacDonald's invention of the Graphophone Grand, so that we may know what time you refer to in your answer to XQ 33?

Question objected to as not germane to the direct testimony of the witness, nor to any issue in this cause, and inasmuch as the question of the date of the said invention of McDonald is at issue

in an interference between ~~xxx~~ said Douglass and McDonald, wherein the burden of proof is upon Douglass, the question appears to be manifestly an improper attempt to utilize the present proceedings for the purposes of another case, and for these reasons the witness is instructed not to answer the question.

Counsel for defendant states for the information of complainant's counsel that the XQ 32 or other cross questions are strictly germane to the issues of this case, and also to the direct examination of this witness, and calls complainant's attention to the fact, that on direct examination the witness was asked whether Douglass was not in the habit of communicating his ideas in reference to his improvements in the talking machine to the witness, thus throwing open as germane cross examination the whole subject of Douglass's communications to the witness during the whole period of the witness's acquaintance with Douglass, and also that the witness was asked on direct examination to state specifically what business relations had subsisted during the time of the witness's acquaintance with Douglass between the witness and Douglass, and further on the direct examination the wit-

ness was asked to state whether Douglass had communicated to the witness the invention in controversy in the interference referred to and in this suit, and that consequently the cross examination is germane to the direct, and counsel for defendant further calls the attention of complainant's counsel to the fact that the date or particular time of Douglass's invention, and the fact as to whether Douglass is the first inventor of the invention in controversy, are facts directly material to the proper determination of the issues in this case; and the ~~fact~~ circumstance that these facts have or may have pertinency to the issues in some other controversy between ~~this party and that party~~ these parties, as the interference referred to, constitutes no reason whatever for the witness refusing to state fairly and frankly the facts, and to answer the questions put to him.

Counsel for defendant further states that there are other reasons which must be plain to the learned counsel for complainant, why the question put to the witness is germane and proper.

Counsel for defendant notifies counsel for complainant that in case the wit-

ness refuses to answer the question, as instructed so to do by complainant's counsel, he will move the court for this reason also to strike the deposition from the record of the case.

Complainant's counsel replies that question 32 and other questions which the learned counsel has attempted to justify in his long statement, were not objected to and therefore require no justification. What counsel for complainant specifically objects to is the attempt to inquire in this case into the date of an invention by one ^{Macdonald} ~~McDonald~~, which question of fact is not in any manner directly or indirectly an issue herein. Counsel for defendant must be well aware that his remedy, if he insists upon the propriety of his question, is a reference thereof to the court for a ruling, and complainant's counsel is ready at any time convenient to defendant's counsel to submit that question to the court. Until the witness is directed by the court to answer the question the instruction already given will stand.

Counsel for defendant states that it is impossible to refer the question to the court, as the court is in

Chicago, nearly a thousand miles away, and that the deposition is being taken in a wholly irregular manner, and not before any master or examiner appointed by the court for the purpose; that defendant and his counsel have been compelled to make this long journey here at great trouble and expense, and the defendant is not able to make a special journey back to Chicago for the purpose of getting the court's ruling, and that, if the witness answers the question and complainant's counsel's objection thereto should be sustained, his remedy is to have the question and answer stricken from the deposition.; and defendant's counsel further calls attention to the fact that the witness's answer to this question is necessary in order to make clear the witness's answer to XQ 32, which was not objected to.

A. I now see that I did not give the answer in question with the precision intended. I did not mean Mr. McDonald's invention of the Graphophone Grand. I meant the exhibition of the invention to Mr. Douglass and others.

That date I can, if desired, fix approximately..

XQ 43. Please do so.

A. By taking some time I can give the exact date. Speaking from memory, I should say it was in the fall of 1898.

XQ 44. Please fix the date accurately?

A. October 18th, 1898.

XQ 45. In making the above answer I notice that you referred to or read from a memorandum book. What is the full entry in the memorandum book in relation to this? Just read it?

A. As follows:

"McDonald made a record on the graphophone with the big cylinder for the first time in my view; covered it with a piece of paper and surprised Douglass and Babson. They thought it was tremendous. Fisher sang to it."

XQ 46. I notice that the memorandum book from which you read is in shorthand. In whose ^{short-}handwriting is it?

A. In mine.

XQ 47. What system of shorthand is it written in?

A. Munson's.

XQ 48. Is it not a fact that you have misread the entry ~~McDonald made a record on the graphophone with the big cylinder for the first time in my view; it was tremendous, and covered it with piece of paper; surprised Douglass, and Babson thought it was tremendous.~~, and that the true entry in the book is as follows:

"McDonald made a record on the graphophone with the big cylinder for the first time in my view; it was tremendous, and covered it with piece of paper; surprised Douglass, and Babson thought it was tremendous."

A. That is not the correct reading. I will read it again:

"McDonald made a record on the graphophone with big cylinder for the first time in my view; and it was tremendous; covered it with a piece of paper and surprised Douglass and Babson, and they thought it was tremendous. Fisher sang to it."

XQ 49. Please read into the record the balance of the matter on the page of your memorandum book from which you have already read.

I see that Douglass and Babson's names are mentioned in several other places on the same page.

By counsel for complainant: The character of this memorandum book, so-called, has not ~~xxxx~~ been made to appear in the record, but I understand it to be the private diary of the witness, and if that understanding be correct the witness is advised that he may use his discretion as to how much of it he cares to exhibit to counsel for defendant or to put into the record; Specific objection is made to the question as irrelevant and immaterial, the only matter in question being the question of the date, which the witness has given.

A. I state that the entry in question contains no other references to the pending case with the exception that it shows that Mr. Andrew Devine was also present; and I decline to read the remainder of the page on the ground that it is my private diary to which I have referred for the purpose of fixing the date, as desired by defendant's counsel.

XQ 50. How long have you been in the habit of keeping a private diary?

A. Continuously, beginning, I believe in 1871.

XQ 51. This memorandum book, to which you have referred, is your diary for what period?

A. 1898.

XQ 52. The whole of the year 1898?

A. Yes.

~~XXXXXX~~ The book to which the witness has referred and identified as his diary for the year 1898 is offered in evidence by defendant's counsel, and the Notary is requested to mark the same "Defendant's Exhibit Easton Diary for the year 1898."

Complainant's counsel assumes that the last remark of defendant's counsel is intended for a joke; but inasmuch as it has gone upon the record, complainant's counsel notes that everyone in the room has duly smiled at it, and supposes that it requires no further attention.

XQ 53. Will you please hand to the notary the memorandum book that she may mark it?

Objected to.

A. I will not.

XQ 54. Why do you refuse?

A. I have referred to the book in question for the purpose of refreshing my memory as to a date. The book is my private diary.

XQ 55. Please look at the book and see if it does not contain an entry under some earlier date than October 18, 1898, of Mr. Douglass's communication to you of his invention of the Grand, or of his idea that the larger the record is made the better would be the sound production therefrom?

Objected to as not calling for any statement of fact within the knowledge of the witness, but for the performance of

manual and intelluctual labor, and the witness is advised that he is not called upon to search this volume, or any other volume at the bidding of defendant's counsel, or to perform any labor whatever at his request; but simply to answer questions as to facts within his knowledge and which may be pertinent to the issues in this case.

A. The book contains no such entry. I can safely make this answer without going through the search requested.

XQ 56. Are you able to state that the book contains no entries about any ideas or suggestions that may have been communicated to you by Mr. Douglass?

A. I am not.

XQ 57 Please examine the book and read into the record all the entries that you may find in it with relation to any ideas or suggestions about talking machines or the talking machine business that may have been communicated to you by Mr Douglass. And also all entries in which Mr. Douglass's name is mentioned?

Same objection and the witness is instructed not to perform the operation requested.

Counsel for defendant notifies complainant's counsel that in case the witness in obedience to complainant's counsel instructions refuses to answer, or attempts to withhold or conceal facts, that a mo-

tion will be made to strike the witness's deposition from the files.

A. I state that it will take me several hours and to examine for the entries in question; ~~but~~ decline to do so.

XQ 58. I see that you have put the book in your drawer. Will you again produce it and let me examine it?

Same objection and instruction.

Notice repeated.

A. In view of the fact that nearly all of the entries in the book in question refer to matters outside of the issue, many of them to personal matters connected with my family, my friends and myself, I should certainly decline to permit the examination desired; but will take pleasure in giving counsel for defendant an opportunity to verify the correctness of the matter already read into the record and my statement that the entry contains nothing else pertinent to the issue except that statement.

XQ 59. In other words you decline to let me see anything in the book excepting the one page containing the entry already read?

A. I do. I produced it only for the purpose of refreshing my memory as to a date.

XQ 60. You are aware, are you not, that Mr. Douglass has stated in affidavits filed in other suits brought by your same complainant company against him and others in the same court, that he communicated to you his invention of the Graphophone Grand, which forms the subject ~~and~~ matter of this suit and of Mr. Douglass's application for patent, a copy of

which has been produced here before the Notary, to you, and involving the idea of using a large diameter sound record ~~xxxx~~ blank of about six inches, and that some of these communications were made to you prior to the beginning of his employment by the complainant company as an experimentalist, on or about March 1st, 1898?

A. I am not; and state that I have given almost no personal attention to this litigation, the matter being in the hands of our patent counsel, Mr. Mauro. I have not seen the affidavits to my knowledge, and have never seen the application of Mr. Douglass until this hearing began. Our litigation is now so extensive that it requires the constant attention of a department; and if I followed the litigation closely I would have no time for other matters.

XQ61. I now inform you that Mr. Douglass has so stated ~~in~~ substantially in affidavits heretofore filed, and that it is his contention in this case that he did communicate to you this invention and his idea that the talking machine would be improved and a better record ~~xx~~ and better reproduction result by increasing the size of the sound record blank to about six inches in diameter; and further, that such communication was made to you by him both prior and after March 1st, 1898, and I will again ask you to produce to the Notary for marking as an exhibit in this case, or for my examination ~~xxx~~ your memorandum book for 1898, to which you ~~xxxxxxx~~ have referred.

Same objection and instruction, and objection is also entered to the unnecessary and irrelevant recital in the question.

A. I decline to produce the book, for any purpose.

XQ 62. And you also decline to yourself examine the book for the matters I have hereinbefore inquired about?

A. Only because I know it would not help me to answer the questions. I know the book contains no such entry.

XQ 63. Will you produce your similar memorandum book or diary for the year 1897? ^{Either for the} ~~xxxxxxx~~ purpose of its being examined by me for the purposes inquired about in my previous questions, or for the purpose of its being offered in evidence as an exhibit?

Same objection and instruction.

A. No.

XQ 64. You decline to produce it?

A. I do.

XQ 65. Will you yourself examine it to ascertain if it contains any ^{entries} ~~answers~~ in relation to any of the matters I have inquired about?

Same objection and instruction.

A. I can give answers for which I am willing to be responsible without such examination, unless it involves matters of date. I have already said there were no such ~~entries~~ ^{entries} previous to October 18, 1898

XQ 66. No entries relating to any ideas or suggestions that Mr. Douglass may have communicated to you in relation to the talking machine?

A. That was not what I said. My response was directed to the questions involved in the present suit

XQ 67. One of the questions involved in the pres-

ent suit, is what if any ideas or suggestions Mr. Douglass communicated to you in relation to improvements on the talking machine prior to March 1st, 1898, and also subsequent to that date. The materiality of all the different things that Mr. Douglass may have communicated or suggested to you is a question for the court, and for defendant's attorneys and complainant's attorneys to consider. You are simply called upon to state the facts, and I have asked you to examine your 1898 memorandum book and read into the record all entries in which Mr. Douglass's name is mentioned, or in any way referred to any idea or suggestion about the talking machine that Mr. Douglass may have communicated to you, and you have declined to either examine the 1898 book yourself or to let me examine it, or to produce it for the Notary to mark as an exhibit; and what I now want to know is whether you similarly decline to examine or to produce for me to examine, or to offer in evidence as an exhibit, your 1897 memorandum book or diary. Please state whether you so decline or not?

Counsel for complainant directs the attention of the court that so far as the foregoing matter contains any question at all, it is identically the question already asked and answered in XQs. 63 and 64, and complainant's counsel to objects, and protests against the course of defendant's counsel in making statements, recitals, deliving lectures on law and other matters, under the guise of conducting a cross-examination, and submits

that this question having been put to the witness several times and answered, it is an abuse of the privilege of cross examination to reiterate it with an introductory homily such as defendant's counsel has delivered.

A. I have nothing new to add.

XQ 68. Then you decline to produce the 1897 book for any purpose?

A. I have nothing new to add.

XQ 69. A categorical answer is respectfully asked to the latter question.

A. I have fully answered this question in my response to XQ. 63 and have nothing new to add.

XQ 70. Do you likewise decline to yourself examine ~~xxxxx~~ your 1897 memorandum book or diary to ascertain and state what, if any, entries it may contain in relation to ideas or suggestions for the improvement of the talking machine which he may have communicated to you of any and all kinds, and what entries it may contain in which Mr. Douglass's name is mentioned?

A. I do.

(half hour recess for lunch.)

XQ 71. Are you willing to state positively that Mr. Douglass never at any time prior to this interview on October 13, 1898, ~~xxxxxxx~~ concerning which you have read an entry from your memorandum book, communicated to you the idea that the larger the record blank was made the better reproduction would result?

A. I have no recollection of any such communication.

XQ 72. Did he ever state to you orally or in writing that the most important thing was the making the record larger, and that the larger the record the better, and don't you remember that about September 1897, when you were in Chicago, he made statements to substantially this effect to you? And in this connection I would have your attention particularly directed to what was probably your first visit to Chicago after Mr. Douglass was appointed Business Manager of the Chicago Office of your sales company, the Columbia Phonograph Co.?

A. Understanding your inquiry to relate to an invention such as is known as the Graphophone Grand, I can state most positively that never at any time did Mr. Douglass disclose such an invention to me, nor speak on the subject prior to October 18th, 1898. I might add in order to make this answer clear, that the Graphophone Grand is considered the greatest invention made in the talking machine art for many years; and that no disclosure of such an invention could have been made to me without at once becoming the most important feature in connection with our business. Such a disclosure I could not forget.

XQ 73. I wish you to answer the question without modifying it, and I will therefore repeat it to you.

Did he ever state to you orally or in writing that the most important thing was the making the record larger, and that the larger the record the better? and don't you remember that about September, 1897 when you were in Chicago, he made

statements to substantially this effect to you?

A. I have no such recollection.

XQ 74. Neither orally nor in writing, nor in the fall or summer of 1897, nor at any time prior to October 18, 1898?

A. That is so.

XQ 75. You stated that one of the ideas for the improvement of the talking machine which Mr. Douglass suggested or communicated to you, was the clock-work motor. By this you mean the application of a ^{spring} ~~spring~~ motor to the graphophone or phonograph, for driving it, do you not?

A. My recollection is that he either suggested or actually made certain modifications of clock-work motors and for driving graphophones ~~xx~~ phonographs.

XQ 76. About when was this?

A. I do not recollect exactly, but it was not very long after the appearance clock-work motors for this use. It was several years ago. I had brought from Europe several specimens of motors ~~xxxxxx~~ manufactured there for this purpose and it was shortly after that time.

XQ 77. When was it you had clock-work motors brought from Europe?

A. Not long after I became the Manager of the American Graphophone Company, which was April 10, 1893. It may have been in the summer or fall of 1893.

XQ 78. When did your company first begin to manufacture ~~xx~~ spring-motor graphophones for sale?

Objected to as irrelevant and immaterial and not proper cross-examination.

A. I could not tell you accurately without reference to the records of the Company. It was, however, not long after the time to which I have referred in the answers to recent questions.

XQ 79. Is it not a fact that before your company began to manufacture spring motor graphophones, that you bought of the defendant Douglass, or his then company, the Chicago Talking Machine Company, spring motors for driving your graphophones for a period of several months, probably six months, and that after buying them for about this period, your company then began to manufacture them?

Same objection.

A. It is the fact that at one time one of the companies with which I was connected bought some spring motors from or through Mr. Douglass, but I think it was the Columbia Phonograph Company, which at that time was an entirely separate corporation from the American Graphophone Company; but I am not sure, the ~~the~~ purchase was confined to that company. The books would show.

XQ 80. Is it not a fact that Mr. Douglass ~~xxx~~ ~~xxxxxx~~ or his then company, the Chicago Talking Machine Company, were the first to introduce and put out a successful spring motor graphophone or phonograph?

Same objection.

A. It is not. The motor preceding the motor sold by Mr. Douglass was successful, in that it would run a talking machine.

XQ 81. What do you mean by being successful in

was the first to practically ~~an~~ apply to driving a talking machine, and that you have repeatedly acknowledged to Mr.

Douglass in the presence of others, and among others to Mr. Charles Dickinson, that Mr. Douglass was the person who was entitled to the credit of the spring motor graphophone

Complainant's counsel objects to the question for the reasons already given and protests against the continuance of an examination regarding matters that have not the slightest bearing upon any issue in this cause.

A. My recollection of the gain which the Amet motor made over its predecessor is that it was in weight. The earlier motor was much heavier and less compact. The Amet motor did not have perfect regulation; and I cannot now say its regulation was better than that of its predecessor. It is true that Mr. Douglass was the active man in the adaptation of the Amet motor to talking machines; and it is quite likely I have previously so stated.

Are

XQ 85. ~~Were~~ any fan regulation spring motor talking machine now manufactured or used in the United States?

Same objection.

A. None, so far as I know, and this answer is equally true as to motors like the Amet motor.

XQ 85. Don't you know, Mr Easton, that from the date of Mr. Douglass's introduction into use of the centrifugal governor spring motor ~~graphophone~~ talking machine, there has not been a single spring motor talking machine manufactured or sold in the United States that has not had a centrifugal

governor, or if any, an entirely insignificant number; and that since that time the centrifugal governor spring motor talking machine has been manufactured and sold to the extent of several ~~millions~~ million dollars worth? and that at the present time all ~~Saxxon~~ spring motor grapho-phones have the centrifugal governor feature?

Same objection.

A. I do not understand that the spring motors that followed the Amet motor used a similar governor.

XQ 87. As you recollect, Mr. Easton, when did Mr. Douglass first communicate to you his idea of duplicating sound records by the use of a machanical connection between ~~them~~ the reproducing and recording tools or styli or points?

Same objection, and objection is further entered upon the ground that questions relating to the matter of duplicating sound records are involved in another case, which is now waiting for defendants to take their proofs. Counsel for defendant is notified that in all such inquiries as the last he is making the witness his own.

Counsel for defendant states that the question is german and proper cross-examination and the witness's answer thereto is believed to be material to this case and that ~~he~~ counsel disclaims any intention of making this witness his own.

A. In the early part of 1892.

XQ 88. When did he first communicate to you his idea of duplicating sound records by the use of an air connection between the reproducing and recording tools, ~~xxxxx~~ styli or points?

A. My answer to XQ 87 was intended to cover the above question 88. I do not recollect when Mr. Douglass communicated to me the idea of duplicating sound records by the use of a mechanical connection between the reproducing tools or styli or points. From the early part of 1892 and for several years he frequently spoke and wrote of modifications and rearrangements of duplicating apparatus; and as there was never any very important single event it would be difficult for me to say more at this time than that the subject was very often referred to between us.

XQ 89. Is it not a fact that he communicated to you about the same time both forms of his duplicating idea, both the air tube connection form and the mechanical connection form?

Same objection and notice

A. On further reflection I recall that he communicated a second form which may perhaps be properly described ~~xxxx~~ as being mechanically connected. This form was first communicated at about the time an application for a patent thereon was made and rejected on a reference to the Bettini patent. That was, I think, several years later than the disclosure of the rarified air process.

XQ 90. You have no recollection, then, of his ever having communicated to you any duplicating idea in which

a mechanical connection, as for example, a lever or levers and link or links, was employed as the connecting means between the recording and reproducing points, as contra distinguished from the air tube connection form prior to about the time of the filing of the application to which you have referred?

Same objection and notice.

A. I have not.

XQ 91. You have no recollection of his building for you or your company at Washington, about July, 1892, a duplicating apparatus involving and using his mechanical connection form, as contradistinguished from his air-tube connection form, have you?

Same objection and notice.

A. I have not. During his stay in Washington I recollect that he was constantly at work modifying or attempting to modify his apparatus; and I am also very sure that he put to work no other form of apparatus than the rarified air form. I have no recollection of seeing or hearing of any other form at that time.

XQ 92. About when did you, the defendant company, or any other of your companies begin to use a duplicating machine or apparatus employing a mechanical connection; that is to say, lever and link connection, between a reproducing recording points.

Same objection and notice.

A. I could not answer without reference to our records.

XQ 93. You can state approximately when, or the

year.

A. I could not state without consultation with others, ~~xixxxzxx~~ and reference to data. I have no independent recollection.

XQ 94. Are you now able to recollect any other ideas or suggestions of Mr. Douglass in relation to the improvement of the talking machine which he communicated to you during the period of your acquaintance with him and prior to October 18, 1898; I mean other than those you have already mentioned?

A. I do not recall anything of importance at this time, but I do not mean to say there were no others .

XQ 95. If you recall any, whether of importance or not, please enumerate them?

A. In answer to that question I may ~~sxyx~~ say that during all of my acquaintance with Mr. Douglass he was much interested in the talking machine business and often made suggestions; but beyond what I have mentioned I cannot now recall any.

XQ 96. During the early history of the graphophone it was made with a paper base record blank about an inch and a quarter in diameter, and covered with a thin coating of wax, called I believe Tainter wax. Do you remember Mr. Douglass suggesting to you his idea of improving the machine by making a cylinder of Edison wax, such as was then used in the Edison phonograph, to be made to fit the chucks of the graphophone. Have you any recollection about this?

A. He may have made such a suggestion. If your inquiry is intended to be whether he was the first to make

such a suggestion, I should say I think not. Where men are greatly interested in a given subject they often make suggestions which are new to them but not to those to whom they make them. One of the reasons why I cannot clearly recall suggestions made by Mr. Douglass, is because, quite naturally, he covered the ground that had previously been covered by others. If he had made an original and novel suggestion of value I think it would remain in my memory.

XQ 97. I think you have entirely misunderstood the question. The question was simply whether you have any recollection about this?

A. I have no recollection of the suggestion you mention, but would not say it was not made.

XQ 98. What, if any recollection do you have about Mr. Douglass's suggestion or explanation to you of his idea of making a mandrel to fit the chucks of the graphophone machine to receive and fit the ~~regular~~ then regular Edison phonograph wax or soap record cylinder or blank?

A. I have no recollection of this idea as being original with Mr. Douglass, my impression being it was first communicated to me by Mr. John H. White, one of the directors of the Graphophone Company, and a demonstration made.

XQ 99. Don't you recollect that Mr. Douglass had been in this way using the regular Edison phonograph cylinders on the graphophone for about a year prior to the time when your company began to use them?

A. Certainly not. I do recollect that Mr. Douglass so used the graphophone.

XQ 100. You have no recollection of his suggesting or advising you or your company to do the same?

A. He may have done so. My point was that I do not recollect the suggestion to have been original with him. I recall several persons who made a similar suggestion.

XQ 101. To refresh your recollection, I will ask you if you do not recollect that Mr. Douglass told you that it would be ~~xxxx~~ this would be the only way to make the graphophone a success, namely, to fix it so that the regular Edison cylinders could be used in it?

A. It is quite possible he said so.

XQ 102. But you are unable to recollect it?

A. My recollection is quite clear that he was among those who advised such a use.

XQ 103. To make your deposition clear, I will now ask you to state whether you are able to recollect that Mr. Douglass communicated this idea to you?

A. I am quite certain that he, among others, did communicate such an idea. I am not at all certain he was the first to suggest it; on the contrary I think Mr. Eohn H. White was the first to both suggest and demonstrate the idea to me.

XQ 104. About when did Mr. White first make his suggestion?

A. My impression is it was in the latter part of 1891 or the early part of 1892, soon after Mr. Lippincott's failure. Mr. White was an inventor who took out quite a number graphophone patents and was a member of the graphophone board of directors.

XQ 105. According to your recollection when did Mr. Douglass first communicate this idea to you?

A. I could not state accurately. I should say it was about the time he received certain slot machines from the Graphophone Company, the first he had.

XQ 106. Do you remember Mr. Douglass making any suggestions or communicating any ideas to you in 1892 about improving these first nickel in the slot graphophones, if so, what was it?

A. I think it very likely he made suggestions on that subject. Indeed, I can recall discussing the subject with him; but none of the details occur to me. It is only fair to say that the machines were capable of improvement and that Mr. Douglass was interested in such work..

XQ 107. Have you any recollection of Mr. Douglass advising you to apply for a patent in 1892 on his mechanical connection form of the duplicating apparatus, as well as on his air connection form?

A. No. Mr. Douglass had charge of his own patent matters at that time. He conferred directly with the patent attorneys and applied for what he thought best.

XQ 108. You can't recollect any conversation with him about this?

A. I can not.

XQ 109. Under your agreement with Mr. Douglass you were to pay for patent applications on the duplicating apparatus, were you not?

A. I paid for the only patent on that subject that he took out, to my knowledge; but I had nothing what-

ever to do with the drawing of the application, nor did I know what the apparatus was until I saw the patent. In other words, Mr. Douglass by direct conference with the patent attorney determined upon what he wanted ⁱⁿ a patent and patented that thing. His process and his apparatus were a secret from me until the application was granted. All that I knew was the result. I should add that I did not ask him to disclose the apparatus; but am quite certain it was not disclosed to me until the application was drawn in the form desired by him.

XQ 110. Have you any recollection of Mr. Douglass having told you about his having fitted up a number of nickel-in-the-slot graphophones to receive the regular Edison cylinder records, in 1892?

A. No distinct recollection, but I think it very likely.

XQ 111. Do you recollect that the following year you and your company did the ~~xxx~~ same thing on your nickel in the slot graphophone?

A. I do not recollect when relatively our company and Mr. Douglass did so; but I am quite sure both did so. I know our company did and I think Mr. Douglass did.

XQ 112. Don't you recollect that you told Mr. Douglass that these two ideas of his, namely, the spring motor with the centrifugal governor to be applied to the graphophone, and the making it to receive the regular Edison record blank cylinders, were the two things that made the graphophone a success?

A. I could not answer this question in the affirma-

~~xxx~~

tive as the inference seems to be that both of these ideas were original with Mr. Douglass, which I do not understand to be the case. Both might have been ~~xxx~~ good things to do and he no doubt was among those who favored them. Both helped in the work. At that time Mr. Douglass did everything in his power, I believe, to forward the interest of the graphophone; and probably ~~advixadxxvery~~ advanced every idea he had that he thought for the good of the service.

XQ 113. What recollection, if any, do you have about Mr. Douglass suggesting or communicating to you the idea of a paring knife to go with the graphophone and the necessity or desirability of having a paring knife for the graphophone, because of the fact that one was furnished with the phonograph and sales were frequently lost because none was furnished with the graphophone?

A. One of the sins for which I hope the American Graphophone Company may be forgiven, was the putting out of a shaving knife, the design for which was given us in the best of faith by Mr. Douglass. It was very simple and inexpensive to manufacture and would have been an excellent knife if it had only been possible to shave with it. We made quite a number. I have yet to hear of a successful user. The knife long since went to the scrap heap.

XQ 114. What, if anything, are you able to recollect about Mr. Douglass suggesting or communicating to you the idea of making a handier and cheaper graphophone by making one without the gate or support at the outer end of the mandrel?

A. I remember such a suggestion by Mr. Douglass

which I then thought was original with him. Shortly afterward, however, while in Paris, I found a machine along similar lines had been actually put out by one Werner, and as Mr. Douglass had been in Paris shortly before me I inferred that he got the idea there.

Adjourned until Saturday, Nov. 25, 1899, 10.A.M.

New York, Nov. 25, 1899, 10. A.M.

Met pursuant to adjournment.

Present, parties as before.

CROSS EXAMINATION OF MR. EASTON CONTINUED.

XQ 115 When did you return from Paris, as mentioned in your last answer?

A. I cannot give the date from memory, but can do so after taking sufficient time to examine data.

XQ 116. Can't you state the year?

A. Not from memory. I have been so often to Paris that I would not undertake to say except after ~~xxxxxxx~~ refreshing my recollection. I remember the circumstance very distinctly, as Mr. Werner told me of Mr. Douglass's visit and of certain representations which he said Mr. Douglass had made, and which were not in accordance with the facts.

The latter part of the answer is objected to as wholly irresponsible to the question.

XQ 117. Did Mr. Douglass suggest or communicate to you his idea of making a handier and cheaper graphophone by arranging and connecting the spring motor directly to the mandrel at one end thereof, locating the spring motor above the base plate instead of below, as had previously been the practice, and by making the machine without a gate or support at the other end of the mandrel?

A. I do not recall such a suggestion.

XQ 118. Do you deny under oath that in the spring of 1894 at the time of Mr. Douglass's return from Europe

- his first trip to Europe - you met Mr. Douglass at the steamer, or on his landing therefrom, and that he then explained to you his idea of making an improved and cheaper graphophone by connecting and arranging the spring motor at one end of the mandrel, instead of below the base plate, as theretofore, and by making it without the end gate at the other end of the mandrel, and that you at this time wanted to send for Mr. McDonald and have Mr. Douglass explain this idea to him, and that when Mr. Douglass told you he was in a hurry, you then asked him to explain it to Mr. Cromelin. Perhaps this will refresh your recollection on the matter.

A. I simply answer that I do not recollect the circumstances as stated; but I ^{will state that} ~~have the~~ for a number of years our relations with Mr. Douglass were friendly; that we often met and that he always appeared to be endeavoring to make suggestions for the improvement of the graphophone and that he made numerous suggestions for such purpose. Of course many of them did not impress us favorably, or as of ~~sufficient~~ importance to receive more than a courteous and friendly reception with expression of appreciation for the good intention shown. Your question appears to dignify an event which I do not remember, if it ever took place. I do not say it did not take place. I say, if it did take place, it had no significance which would cause me to remember it.

XQ 119. About when did you begin to manufacture and sell the little machine known as the Eagle Graphophone, in which the spring motor is arranged and connected at the end of the mandrel instead of below the base plate,

and which you made with out an end gate ~~xx~~ at the other end of the mandrel?

A. We have made so many types of machines that I could not answer such a question except by reference to the records.

XQ 120. Do you state under oath that you are unable now to recollect that this Eagle machine was first put on the market by your company in the year 1897?

A. I would not attempt to give even the year without reference to the records of the factory. I should say it was probably either 1896 or 1897.

XQ 121. Are you not able to recollect that when you were in Chicago, about July 1897, that you brought one of these Eagle machines with you, showed it to Mr. Douglass, and told him that it was one of the first three that were ever made, and that you were then just getting them out?

A. I am not; although such may be the case. I went often to Chicago and it was usual in those days for me to have samples of graphophones with me. Such an event as you mention, if it occurred, would have no ~~significance~~ extraordinary significance, but would rather be in the ordinary course, and therefore I would not be likely to recollect it at this date.

XQ 122. The Werner machine which you saw in Paris, when you were there about August 1895, and which Mr. Douglass saw when he was there a few months earlier in 1895, was a machine having a motor below the ~~mandrel~~ base plate and which also had a reciprocating mandrel, was it not?

A. I take no responsibility for the dates in

your question, nor do I remember so well other details of the Werner machine than that stated by me. I remember that detail with great distinctness because Mr. Douglass showed me in Chicago a model of a graphophone without an end gate, which I at first thought might have been suggested to him by the original Edison tinfoil phonograph; and afterward, when I saw the Werner machine, it seemed probable the suggestion came from there. As I recollect, when he presented the model he did not say it was original with him.

XQ 123. Did Mr. Douglass ever communicate to you an idea of his for improving the talking machine by making it to receive a long cylinder blank two or three times the length of the ordinary blank, and providing the machine with two, three, or more recorders, operating simultaneously to record the same matter, and then simultaneously reproducing the matter thus recorded in duplicate or triplicate, by two, three, or more reproducers operating simultaneously?

Counsel for complainant enters an objection to the form of this and similar questions, in that it and they assume as facts matters which have not been proved, that ideas described by the counsel are ideas of Mr. Douglass. Counsel for complainant further objects to the continuance of this line of cross-examination as not developing ~~xxx~~ any material or important matter.

A. I remember hearing him speak on such a subject I do not know whose the idea was originally.

XQ 124. When first?

A. I could not say. The matter did not assume sufficient importance as presented to make the date conspicuous; but I do remember the fact. It will ~~assist~~ assist ~~xxxXQxk25xx~~ perhaps to make many of my answers plainer if I say that Mr. Douglass was industrious and enthusiastic about matters connected with the talking machine. He was also very sanguine. I learned, as a matter of experience, that he did not differentiate between hopes and realizations. He presented many subjects in a fragmentary way; and especially toward the latter part of our acquaintance I did not attach much importance to the ideas and plans that he suggested, having seen what had happened to nearly all of them.

XQ 125. How long did Mr. Douglass remain in the employ of the American Graphophone Company in 1892?

A. I think only a few months. The records will tell exactly.. He obtained an offer in Chicago which he accepted, perhaps partly on my advice. I did advise him to accept it.

XQ 126. He was never afterwards in the employ of the complainant company until he entered its employ as experimentalist, on or about March first, 1898?

A. I do not at this time recall any other period

XQ 127. His employment as Business Manager of the Chicago office of your sales company, the Columbia Phonograph Company, began August 1st, 1897, and ended on or about March 1st, 1898?

A. I am not certain as to the dates, but they are, I think, approximately correct.

It would be easy to fix them accurately.

XQ 128. You stated in your direct examination that Mr. Douglass did not communicate to you the invention forming the subject of this suit, consisting in the use of a record blank of large diameter rotating at the customary speed of rotation employed in talking machines, prior to the date of his entering the employment of the complainant as experimentalist, and you have stated on your cross examination that he never communicated this idea to you at any subsequent time prior to October 18, 1898. Did Mr. Babson, or Mr. Dickinson, or any other person, ever communicate this idea or invention to you prior to October 18, 1898; and if so, whom? and when?

A. None of those named made such a communication; another person did. The communication was made by Mr. T.H. McDonald. I cannot state---

At this point counsel for complainant interrupts the witness and renews the instruction heretofore given not to testify as to any knowledge he may have regarding the date of any invention of Mr. McDonald.

(witness continues) Under the instruction of my counsel I decline to complete the answer.

XQ 129. Did Mr. McDonald make any such communication to you prior to the beginning of Mr. Douglass's employment as an experimentalist?

Same instruction.

A. I decline to answer.

XQ 130. Do you know the date of Mr. McDonald's alleged invention?

Same instruction.

A. I decline to answer.

XQ 131. Are you the same Edward D. Easton who
complainant
signed and swore to the bill of ~~complaint~~ in this cause?

A. If my name appears to the bill, I am. I do not remember executing it.

XQ 132. At the time you signed and swore to that bill of complaint, did you honestly believe that Mr. Douglass was the inventor of the invention described in his application and known as the Graphophone Grand, or Concert Phonograph?

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and which you asked for a decree that Mr. Douglass be com-
pelled to assign it to your company?

Objected to as not calling for a matter of fact within the knowledge of the witness, but for a matter of belief, which is immaterial and incompetent.

A. I am unable to see what bearing my belief would have on a question of fact outside of my knowledge.

XQ 133. It is immaterial whether you are able to see what bearing it may have. Please answer the question?

A. I certainly did not believe him to be the original inventor of the Graphophone Grand.

XQ 134. At the time you signed and swore to the bill of complaint in this cause, did you honestly believe that Mr. Douglass made or worked upon this invention during the period he was employed by you? as an experimentalist for the complainant company?

Same objection.

A. If I signed and swore to the bill of complaint I did so after reading the same and am willing to assume the full responsibility therefor. I should say that we file many bills of complaint; that bills of complaint are sometimes executed by our vice-president, during my absence; that I do not recollect executing this bill of complaint, and therefore give ^{no} ~~an~~ answer based upon such recollection.

XQ 135. I will inform you, Mr. Easton that your name appears on the bill of complaint in this cause now on file in the court at Chicago, and I will again ask you to state whether or not at the time you signed and swore to this bill of complaint you honestly believed that Mr. Douglass either invented or worked upon this invention of the Graphophone Grand during the period of his employment by the complainant company, and if so, to state the basis of your belief?

Same objection.

A. I do not believe Mr. Douglass to have been the first inventor of the Graphophone Grand. I think it likely he worked upon this subject at some time; I do not know when. I have heard so at second hand, or third hand.

XQ 136. You will please answer the question. I am not asking you what you believe now, but what was your belief at the time you signed and swore to the bill of complaint?

A. There has been no change.

XQ 137. Then, at the time you signed and swore to the bill of complaint you did not honestly believe that Mr. Douglass either made this invention or worked upon it during the period of his employment by the complainant company?

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Same objection.

A. I have said nothing as to whether he worked upon it during that period and have no opinion to express.

XQ 138. At the time you signed and swore to the bill of complaint what, if any, information did you have or did you have any information that Mr. Douglass was the inventor of this invention, which you prayed the court to compel him to assign to you, on the ground that it was made by him during the period of his employment by the complainant as an experimentalist.

Counsel for complainant renews his objection, and specifically objects to the last question on the ground that it asserts what is not a fact, namely, that the bill of complaint herein prays for the assignment of the invention, whereas it recites a certain application for patent and prays for an assignment of that; that it does not allege that the invention of that application was made by said Douglass during the term of his employment as an experimentalist, or at any other time, but specifically that the said application was based upon work done during such period, and counsel for complainant feels called upon to enter his protest against the manifest unfairness of the question.

Counsel for defendant protests against complainant's counsel misstatements of the contents and effect of the bill of complaint.

Counsel for complainant, not doubting that defendant's counsel has made his last statement in entire good faith, suggests in a spirit of kindness, that he put in his question, not his own interpretation of the document, but the language of the document itself, and ask the witness if he believed those statements to be true when he executed the bill. If the question be so put complainant's counsel will make no objection.

A. I had information that Mr. Douglass claimed to be such inventor; that he claimed to have made the invention while in the service of the American Graphophone Company; that he admitted the invention, if any, was ours; that he ~~intended~~ intended to assign the invention, or the application; that all that he wanted was the credit for making it. I had information that he based his claims in part upon an official communication made to me in the course of his work as an experimentalist.

XQ 139. What was the source of this information; how did you get it, and from whom?

A. From representatives in Chicago, Messrs. Poole and Brown, among others.

XQ 140. What others?

A. I think Mr. George W. Lyle, the Manager of our Chicago office. I recall no other name at this time.

XQ 141. Poole & Brown are your attorneys in Chicago in this case?

A. Yes.

XQ 142. You stated that Mr. Douglass never communicated this idea ~~xxxxxx~~ or the invention to you, or mentioned it in any way, either written or orally at any time prior to the interview in your factory at Bridgeport, Connecticut, when the large cylinder machine covered with a piece of paper was operated for him and Mr. Babson to hear.

Do you deny under oath, Mr. Easton, that on the train, when you and Mr. Douglass and Mr. Babson were going from New York to Bridgeport on October 18th, 1898, and were sitting together you and Mr. Douglass on the same seat, and Mr. Babson facing you on the adjoining seat, that Mr. Douglass and you had a conversation about this invention which is in controversy in this suit and now known as the Graphophone Grand or Concert Phonograph, according as it is manufactured by your company or the Edison company, and which involved the use of a large diameter cylinder, and that in this conversation you and Mr. Douglass had a conversation substantially ~~xxxxxxxxxxxx~~ to this effect, that Mr. Douglass asked you, "Why don't you make a larger diameter cylinder on the talking machine; it would make a better record?" and you then asked him, "Would it be any better?" and Mr. Douglass told you that it would be much better, that he had tried it. That you then asked him how large he would make it, and he then told you he would make it about six inches in diameter.

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That you then asked him how loud it would be, and he told you it would be almost as loud as a man's natural voice. That you asked him if it would be any use to make it any larger, and he told you that he thought ~~xxxxxxkaxakaxkaxkax~~ it could be made still larger, but he thought that six inches would be as large as practical??

A. Such conversation did not take place on the way to Bridgeport. It may have taken place on the return journey after Mr. Douglass had seen the Graphophone Grand. I do not recall the conversation as ever having taken place; but I am sure it did not take place at the time stated in the question.

XQ 143. Then, as I understand you, you do not deny that substantially such a conversation may have taken place on the train, but you do deny that it took place on the way to Bridgeport. Is that right?

A. I deny that the conversation took place before exhibition the ~~exposition~~ to Mr. Douglass of the Graphophone Grand in Bridgeport.

XQ 144. Now, Mr. Easton, don't you recollect stating to Mr. Douglass and to Mr. Babson after the exhibition of the machine to Mr. Douglass and to Mr. Babson, or just at the time of such exhibition of the machine, words substantially to this effect: "Aint it funny, ^{that} you were telling me about this same thing coming up here on the train"? and that this remark by you was made immediately after the paper which covered the machine accidentally fell off so that Mr. Douglass could see what it was that was making such a tremendous loud noise?

A. I do not recollect such a statement and am very sure it was not made. I am confirmed in this belief by the recollection of Mr. Douglass's bearing when he first heard the Graphophone Grand. He seemed amazed, and almost appalled. He also seemed very much discouraged. He had been talking quite enthusiastically about what he called the polyphone, which was an arrangement intended to increase the volume of sound. He said, "When I first heard that machine", meaning the Graphophone Grand, "I felt completely knocked out, for I thought that was the end of the polyphone. Then it occurred to me that this might not be so, and that I could attach the polyphone to the machine," meaning the Graphophone Grand, "and realize on the polyphone in that way."

XQ 145. Do you deny under oath that at ~~xxxxxx~~ ~~xxxx~~ or about the time the paper fell off you made this statement, substantially to the effect, "Isn't it funny that you were or should have been talking about this same thing coming up here on the train", to Mr. Douglass in the presence of Henry B. Babson?

A. I do not believe any such conversation took place on the train, nor in the room at the time you mention.

XQ 146. Did you make such statement to Mr. Douglass at any time, on October 18th, 1898, to the effect substantially, "Isn't it funny that you should have been talking about this same thing coming up here on the train?"

A. I have no hesitation in answering that question, no.

XQ 147. You positively deny making that statement to Mr. Douglass in the presence of Mr. Babson, do you?

A. Certainly.

XQ 148. Don't you remember that you repeated that statement to Mr. Douglass in the presence of Mr. Babson in the room where this large cylinder machine was, and also again at the station, while Mr. Douglass and Mr. Babson were waiting for the train that they were about to take back to New York?

A. Certainly not.

XQ 149. Do you positively deny that you made such statement?

A. I do.

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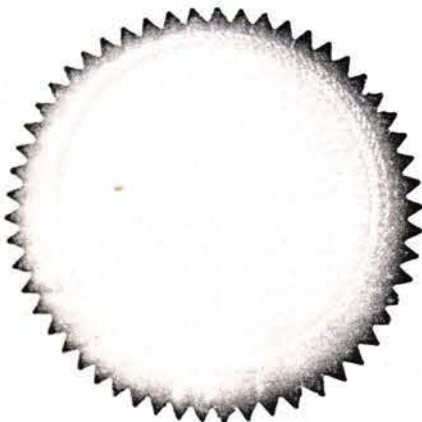
Adjourned by consent subject to further notice, the understanding of counsel being that further taking of testimony by complainant in this suit will be resumed as promptly as possible after the taking of proofs on behalf of Mr. Douglass in the pending interference between Douglass and McDonald.

AMERICAN GRAPHOPHONE COMPANY,
Complainant,
-against-
LEON F. DOUGLASS,
Defendant.

No. 25,199.

IN TESTIMONY WHEREOF I have hereunto set my
hand and affixed my seal this 16th day of April, A.D.1900.

Notary Public, (4)
City and County of New York.



CROSS-BILL.

To the Honorable Judges of the Circuit Court of the United States for the Northern Division of the Northern District of Illinois.

In Chancery Sitting:

1. Leon F. Douglass, a citizen of the United States and a resident of Chicago, in said Northern Division of the Northern District of Illinois, brings this his cross-bill of complaint against the American Graphophone Company, which Company in its bill of complaint filed in this Court, against your orator, alleges that it is a corporation organized and existing under the laws of the State of West Virginia, and having its principal office in the City of Washington, in the District of Columbia.

2. Your orator shows unto your Honors that on June 5, 1899, said American Graphophone Company brought its certain bill of complaint in this Court against your orator to compel your orator to assign to said Company a certain application for patent alleged to have been filed in the early part of the year ¹⁸⁹⁹ by your orator for a talking machine or graphophone, having a mandrel of large diameter (about six inches) combined with means for rotating the same at the customary speed of 120 revolutions per minute, whereby the volume and distinctness of the reproduced sounds are increased; and to compel your orator to account for and pay over to said Company all his gains and profits from the manufacture and sale of the invention covered by said application for patent; and to enjoin your orator pending the hearing from parting with said application for patent, or with any interest therein, and from granting any right or license thereto or in any man-

ner impairⁱing the alleged rights of said Company in respect there-
to ;the ground for said relief so asked being that your orator
was alleged to have made the invention of said application for
patent during a certain period of time beginning March 1,1898 and
ending October 1,1898,while your orator was in the employ of said
Company as an experimentalist,and under obligation to assign to
said Company all inventions made by him during said period. And
your orator further shows that in due course he filed his answer
to said bill of complaint and denied that said American Grapho-
phone Company had any right or title to his said application for
patent,or the invention covered thereby,and among other things
alleged the fact to be that your orator had made said invention
long ~~priorxxxxxxxxxxxx~~ before he entered into the employment of
said American Graphophone Company. And thereupon in due course
said American Graphophone Company filed its replication to your
orator's said answer and said cause is now at issue,and still
pending and undetermined in this Court.

3. And your orator further shows that said application for
patent so referred to in said bill of complaint as having been
filed by your orator in the early part of the year 1899,is in
fact your orator's certain application for patent,Serial No.
704,508,Filed February 4,1899 in the United States Patent Office;
and that the invention described and claimed and sought to be
patented therein is an improvement in the art of making sound
records on the wax-like tablets or cylinders of talking machines,
and consists in the discovery that by materially increasing or
substantially doubling the surface speed of the wax-like revolv-
ing tablet on which the sound record is formed by the usual meth-
od of cutting or engraving,a very substantial improvement in the
loudness and quality of the sound record results in the repro-

duction of such sound record, over that of the old art wherein the surface speed customarily in use was from 687 to 824 inches per minute; that said invention of said application is present and its results accomplished when the wax-like cylinder or tablet of the talking machine is given a surface speed of 1200 inches or more per minute in making the sound record; and said invention is the improvement in talking machines now in commercial use under the familiar names of Graphophone Grand, Concert Phonograph and Little Jumbo; in the two former of which a cylinder or tablet of large diameter (five inches) is employed and rotated at the customary speed of from 100 to 120 revolutions per minute, the same being a surface speed of from 1570 to 1884 inches per minute, and in the latter of which, (the Little Jumbo) the ordinary 2.3-16 inch diameter ~~the~~ cylinder or tablet is employed and rotated at double the customary number of revolutions per minute, the same being a surface speed of from 1374 to 1649 inches per minute.

4. Your orator further shows that he is the original and first inventor of the invention shown and described ⁱⁿ and forming ^A the subject of his said application for patent, Serial No. 704,508, and now in commercial use under said names Graphophone Grand, Concert Phonograph and Little Jumbo; and that he had made said invention, disclosed it to others and fully demonstrated it and reduced it to practice by actual use long prior to said date, March 1st. 1898, when he entered the employ of said American Graphophone Company as experimentalist; and that long prior to said date, March 1st. 1898, he disclosed and communicated said invention to said American Graphophone Company and to its President, Edward D. Easton.

5. Your orator further shows that after he had as aforesaid disclosed and communicated said invention to said American

Graphophone Company and its President, E. D. Easton, said American Graphophone Company and its said President, thereafter, to-wit: on or about October 18, 1898, and at various times subsequent to said date, in October and November, 1898, acknowledged to your orator that, ^{your orator} ~~he~~ was the first inventor and owner of said invention by various acts, doings, words and letters in which your orator was treated and recognized by said Company and its President as such inventor and owner, without on its or their part asserting any inventorship or right or title to said invention in or to any other party, and without laying any claim to said invention, and also by permitting your orator to state, that said invention was your orator's without making any protest or assertion of adverse inventorship or ownership. And that said American Graphophone Company by reason of the foregoing, is in equity and by right ought to be forever estopped from asserting or claiming that any other person than your orator is the inventor, ~~an~~ ^{and} owner of said invention.

6. Your orator further shows that after he had so disclosed and communicated said invention to said American Graphophone Company and its said President, and after he had asserted to said American Graphophone Company and its said President that said invention was his, said American Graphophone Company and its President caused its employee and factory manager, one Thomas H. Macdonald, unjustly and wrongfully to file in the Patent Office of the United States on December 5, 1898, an application for patent, Serial No. 698,328, on said invention, and to assign the same to said American Graphophone Company, and the same was so filed and assigned.

7. Your orator further shows that thereafter and on or

about December 31st.1898 said American Graphophone Company and its said President attempted to deter and delay your orator from filing his said application for patent on said invention by conveying to your orator the false information that said American Graphophone Company had already taken out patents on said invention in all European countries as well as in Japan, and that said patents were already allowed; and by causing its attorney to wrongfully advise your orator that your orator was under obligation to assign his said invention to said American Graphophone Company; and also by holding out to your orator in the shape of a telegram ~~of~~ a meaningless promise to the effect that your orator would be given by said American Graphophone Company full credit for said invention. And your orator relying for some time upon the fact that said American Graphophone Company did recognize and treat him as the inventor of the said invention did not file his application in the Patent Office until February 4, 1899, and not until after said American Graphophone Company had caused its said employee, Macdonald, to file his said application and assign the same to said American Graphophone Company, as aforesaid.

8. Your orator further shows that thereafter, to-wit: on July 1, 1899, the Patent Office of the United States declared a proceeding, No. 20,090 certain interference, between your orator on the one side and Thomas H. Macdonald assignor to said American Graphophone Company on the other side for the purpose of determining who was the first inventor of said invention set forth in your orator's said application, Serial No. 704,508, and Macdonald's said application Serial No. 698,328.

And in due course testimony was taken by both sides in said interference, and the same has been duly printed and filed in the

patent Office of the United States. And your orator further shows that on or about February 21, 1900 a stipulation in writing was duly made and entered into between the parties to said suit, the American Graphophone Company as complainant and your orator as defendant, whereby it was agreed that a printed copy of the record and testimony in said interference No. 20,090 may be filed and used as evidence in said cause with the same force and effect as if originally taken therein. And that the only other testimony yet taken on either side in said suit is the deposition of said American Graphophone Company's President, Edward D. Easton, taken on behalf of said American Graphophone Company.

9. Your orator further shows that the testimony and record taken, printed and filed in said interference suit, and so stipulated as aforesaid into said cause, shows the fact to be, and the fact is, that said Macdonald is not the first inventor of said invention and that your orator is the first inventor thereof; that your orator had conceived the invention and had reduced the same to practice by actual use before the said Macdonald even pretends to have conceived it, and that Macdonald is not an original inventor at all of said invention.

10. And your orator further shows that said Macdonald's said application for patent thus wrongfully caused to be filed by said American Graphophone Company, and said interference proceeding thus wrongfully and inequitably brought by said American Graphophone Company, and ~~by~~ said American Graphophone Company's said alleged claim of title to and ownership of your orator's said application for patent, are each and all clouds upon your orator's title to said invention and unjustly hamper and hinder your orator in exercising his right in and ownership of your

orator's said invention and application for patent, and such
X clouds upon your orator's title to said invention and application
for patent ought in equity to be removed.

11. Your orator further shows that said American Graphophone Company as assignee of said Macdonald's said application for patent in said interference proceeding in the Patent Office, asserts and pretends that said Macdonald is the original and first inventor of said invention, while at the same time in its said suit in this Court it claims title to said invention through your orator as the original and first inventor. And your orator further shows that by reason of said American Graphophone Company's bill of complaint herein filed as aforesaid, said American Graphophone Company is, and of right ought to be, estopped in equity from asserting in this Court that your orator is not the original and first inventor of said invention to which it claims title through your orator as inventor.

12. And your orator further shows that said American Graphophone Company well knowing the premises, and sometimes confederating with others to your orator unknown, (but whom when discovered your orator prays leave to make defendants hereto) but contriving to injure your orator and deprive him of the benefits and advantages which might and otherwise would accrue to him, after the date when your orator disclosed and communicated his said invention to said American Graphophone Company, and previous to the filing of this cross-bill, at Chicago in the said Northern Division of the Northern District of Illinois, and ⁱⁿ other parts of _A the United States, without the license or consent of your orator, and without right and contrary to equity, did, unlawfully and wrongfully make or caused to be made, used or caused to be used,

vend or caused to be vended talking machine tablets or cylinders and machines known as the Graphophone Grand expressly designed to practice said invention, and in which said invention inheres, and since about December 1st, 1898 so made, used and sold large numbers of said talking machine tablets or cylinders and machines containing said invention, and still continues and threatens to continue so to do, and has made and realized large profits and advantages from the making, using and vending of your orator's said invention, to which profits and advantages your orator is in equity entitled and whereof he prays a discovery. And your orator is informed and believes, and charges the fact to be, that already said American Graphophone Company by its wrongful acts as aforesaid, has made and realized profits and advantages from its unlawful use, manufacture and sale of your orator's said invention amounting to not less than \$300,000.00 ~~XXXXXXXXXXXX~~ which in equity belongs to your orator as the rightful owner of said invention. And your orator further shows that the market for said invention is thus, by the wrongful acts of said American Graphophone Company, as aforesaid, being forestalled while said American Graphophone Company is unjustly hindering your orator from obtaining his patent for said invention.

13. Your orator further shows that by reason of said application of said Macdonald so filed and assigned as aforesaid, and said interference proceeding resulting therefrom, the issuance of the patent to your orator upon his said application, has been already greatly delayed, is still being, and will still further be greatly delayed, of which delay said American Graphophone Company has been ^{and} is now taking advantage, and will continue and threatens to continue to take advantage by forestalling the market for

said invention, as before stated; and that your orator has no other adequate remedy save by this cross-bill either to protect his rights by injunction or to recover the profits and advantages said American Graphophone Company has wrongfully received and derived from its unlawful manufacture and sale of said invention.

14. All of which acts and doings of ~~the~~ said American Graphophone Company are contrary to equity and good conscience, and tend to the great loss and injury of your orator, and cause him great damage, and have deprived and are still depriving him of great gains and profits which he might and otherwise would have obtained and received.

15. To the end, therefore, that said American Graphophone Company may, if it can, show why your orator should not have the relief hereby prayed, and may, according to the best and utmost of its knowledge, remembrance, information and belief, true, direct and perfect answer make to all and singular the matters aforesaid (your orator hereby waiving, pursuant to the statute, the necessity of the answer of said American Graphophone Company being put in under oath), and that as fully and particularly as if the same were here repeated and it was distinctly interrogated thereto.

16. And forasmuch as the said American Graphophone Company has voluntarily come into this Court and asked that your orator be compelled to assign to it all right and title in and to said invention and said application for patent therefor, and has asked that your orator be enjoined from exercising his ownership of said invention, and has asked that your orator be compelled to account for and pay over to it all gains and profits that your orator may have made by the practice of his said invention, and because full justice cannot otherwise be done between the parties

in relation to the subject-matter in litigation in said original bill, and because your orator has no adequate or sufficient relief under the strict rules of the common law, your orator prays as follows:

That said American Graphophone Company be decreed to have no right or title whatever in or to your orator's said invention, or your orator's said application for patent therefor.

That said American Graphophone Company's alleged claim of title to said invention through your orator as inventor, and to your orator's said application for patent be decreed to be without right, force, effect or validity.

That your orator be decreed to be the inventor and owner of said invention and to have good right and title thereto and to his said application for patent therefor.

That your orator be decreed to be of right entitled to receive a patent for said invention upon his said application as the original and first inventor thereof, as against the alleged claim of said American Graphophone Company to receive a patent therefor as assignee of said application for patent of its employee, Thomas H. Macdonald.

That the said American Graphophone Company, its agents, servants, attorneys and employees be perpetually enjoined from asserting title to or ownership of said invention through said application of said Macdonald, and also from further prosecuting said Macdonald's application in the Patent Office.

That said American Graphophone Company be decreed to account for and pay over to your orator all profits and advantages by it acquired and the damages by your orator sustained from the aforesaid unlawful acts of said American Graphophone Company.

That said American Graphophone Company, its agents, employees, servants, workmen and attorneys be perpetually enjoined from directly or indirectly making or causing to be made, using or causing to be used, vending or causing to be vended, said Graphophone Grand or other talking machine tablets or cylinders ~~and~~ machines containing or specially designed and constructed for practicing your orator's said invention, or in any way counterfeiting or imitating your orator's said invention.

Also that said American Graphophone Company and the persons aforesaid be enjoined as aforesaid provisionally and pending this suit; also that said American Graphophone Company be decreed to pay the costs of this suit to be taxed, and that your orator may have such further or other relief in the premises as the nature of the circumstances of this case may require and to your Honors shall seem meet.

May it please your Honors to grant unto your orator a writ of injunction issuing out of and under the seal of this Honorable Court to be directed to the said American Graphophone Company and its attorneys, solicitors, agents and servants commanding them, and each of them, as hereinbefore prayed.

May it please your Honors, the said American Graphophone Company being already in this Court by its said bill of complaint, to order said American Graphophone Company to answer the premises set forth in this your orator's cross bill, and further to stand to, perform and abide such order and decree herein as to your Honors shall seem agreeable to equity and good conscience. And your orator will ever pray. etc.

Leon A. Douglass

*John W. Munday
Edmund Atcock
of counsel*

*Munday & Atcock
Solicitors*

State of Illinois,)
 -1- ss.
County of Cook.)

On this 12th day of *April*, A.D.1900, before me personally appeared Leon F. Douglass, the complainant in the above cross-bill, and made oath that he has read the above bill by him subscribed, and knows the contents thereof, and that the same is true of his own knowledge, except as to matters which are therein stated on information and belief, and as to those matters he believes it to be true.

H. W. Munday

Notary Public.

Supreme Court of the United States
Patent Division of the No. 100
American Consulate
Leon F. Douglass
"Complainant Exhibit Patent Division
Douglass Application."
November 20, 1899.

2-175.

Department of the Interior,

UNITED STATES



PATENT

FILED

APR 18 1900

E. H. Lyman
CLERK.

To all persons to whom these presents shall come, Greeting:

This is to certify That the annexed is a true copy from the
records of this office of the File Wrapper
and contents, in the matter of the
Application of
Leon F. Douglass.
Filed January 4, 1899. Serial Number 704,508
Talking Machines.
in the Interference of
Douglass vs Macdonald
No. 20,090.
Subject- Matter Talking Machine

In testimony whereof I have hereunto set my hand and
caused the seal of the Patent Office to be affixed at
the City of Washington this 8th day
of November, in the year of our Lord one
thousand eight hundred and ninety-nine
and of the Independence of the United States of
America the one hundred and twenty-fourth.



C. H. Druell
Commissioner of Patents.

AMOUNT RECEIVED

15
CR

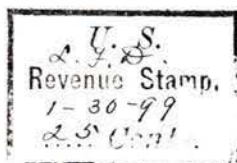
CHIEF CLERK.

P E T I T I O N .

TO THE COMMISSIONER OF PATENTS:

YOUR PETITIONER. LEON F. DOUGLASS a citizen of the United States, residing at Chicago in the County of Cook and State of Illinois prays that Letters Patent be granted to him for the Improvement in Talking Machines set forth in the annexed specification; and he hereby appoints John W. Munday, Edward S. Evarts and Edmund Adcock, composing the firm of MUNDAY, EVARTS & ADCOCK, (Register No. 1248) of No. 906 Marquette Building, Chicago, Illinois, his attorneys with full power of substitution and revocation, to prosecute this application, to make alterations and amendments therein, to receive the patent, and to transact all business in the Patent Office connected therewith.

Leon F Douglass.



S P E C I F I C A T I O N .

TO ALL WHOM IT MAY CONCERN:

Be it known, that I, Leon F. Douglass a citizen of the United States, residing in Chicago in the County of Cook and State of Illinois have invented a new and useful Improvement in Talking Machines of which the following is a specification:

In the drawing A represents the frame of the machine, B is the sound record blank or cylinder of a wax composition, the same as those heretofore in use on graphophones or phonographs, excepting that it is of large size, preferably six inches in diameter, or three times the size of those heretofore employed C is the shaft or mandrel upon which it is mounted. D represents a talking instrument, the same being either a recorder or reproducer according as the machine is being used for recording or reproducing speech, music or other sounds.

3/13/99 The talking instrument D may be of any suitable construction, but is preferably of the construction now commonly in use on graphophones or phonographs. d is the recording or reproducing point or stylus of the talking instrument. D¹ is the pivoted arm upon which ^{talking instrument} it is mounted, and D² represents the horn or sound conveying device.

11 F is the hinged arm upon which the reproducer carrying arm is mounted. It is preferably provided with a curved slot f, so that the reproducer arm may be moved to different positions ~~radially~~ in respect to the sound record blank or cylinder. This enables the inclination of the horn to be varied as may be desired. F¹ is the lever ^{by} ~~whereby~~ which the arm F is lifted so as to clear the reproducing point from the sound record cylinder or blank.

H represents a spring or other motor by which the sound record cylinder or blank is rotated at a uniform speed of any from one hundred to one hundred and twenty revolutions per minute.

This motor may be of any suitable construction, but preferably similar to those now ^{commonly} employed upon graphophones or phonographs.

While I prefer to employ a sound record blank or cylinder of six inches in diameter, it will of course be understood by

My invention relates to improvements in talking machines, and the art of recording and reproducing speech and vocal and instrumental music.

In the ordinary graphophones, phonographs or talking machines heretofore commonly and generally in use, the sound record blank or cylinder of wax or other material upon which the sound record is recorded, and by which it is reproduced, has generally been made about two inches in diameter and rotated at a speed of about one hundred or one hundred and twenty rotations per minute during the recording and reproducing operations. The speech, vocal music, instrumental music or other sounds recorded and reproduced by such machines has heretofore been faint and defective, lacking in volume and clearness, in loudness, distinctness and naturalness; and many efforts have heretofore been made to remedy these defects.

I have discovered and demonstrated by experiments, and herein my invention consists, that by the very simple expedient of combining with the recorder or reproducer a sound record blank or cylinder of large size, preferably about six inches in diameter, or three times the size heretofore commonly used, while running at practically the same speed as heretofore, say from one hundred to one hundred and twenty revolutions per minute, a very marked and astonishing improvement or change for the better is produced in respect to the volume, clearness, distinctness and naturalness of the speech, vocal music, instrumental music or other sounds recorded or reproduced.

In the accompanying drawing forming a part of this specification, Fig. 1 is an end elevation, partly in section, of a machine or apparatus embodying my invention, and Fig. 2 is a detail vertical section showing the sound record cylinder of full size. Fig. 3 is a plan view of the weight attached to the reproducer.

those skilled in the art that this particular size may be varied to some extent without departing from the principle of my invention or discovery.

When the machine is used for reproducing the talking instrument or reproducer D is furnished with a weight as D^3 , or otherwise made about twice as heavy as the reproducers now generally in use. This weight may be removably attached to the reproducer by slipping it over the tubular projection d^1 on the back of the reproducer. In Fig. 1 the machine is represented with a recorder as the talking instrument D, and is preferably provided with no extra weight D^2 .

I claim:

-1-

The combination with a large sound record blank or cylinder of a wax-like composition of say substantially six inches in diameter, of a talking instrument and a motor for rotating the large sound record cylinder or blank at the usual or customary speed of one hundred or one hundred and twenty revolutions per minute, whereby the volume, clearness, distinctness and naturalness of the speech, vocal music, instrumental music or other sounds recorded or reproduced are greatly increased, substantially as specified.

-2-

3/13/99 The improvement in the art of recording speech, vocal music, instrumental music or other sounds, consisting in recording the same by cutting the record thereof on a cylinder of large diameter, of wax-like composition and rotating at a high speed of say one hundred or one hundred and twenty revolutions per minute, *substantially as specified*
4/21/99 *that is to say by cutting the record at two or more times the surface speed heretofore employed*
substantially as specified.

-3-

Cancelled per B. 5/3/99 The improvement in the art of reproducing speech, vocal music, instrumental music or other sounds, consisting in reproducing the same by the co-operative operation of a reproducer with a sound record cylinder of large diameter, rotating at a high speed, *substantially as specified*
Invent- speed, *substantially as specified*.

a' 4/21/99 The combination with a reproducer of a sound record cylinder of *substantially six inches* large diameter rotating at high speed, *substantially as specified*.
a² 4/21/99

Leon. E. Douglass

Witnesses
Edmund Adcock
H M Munday

-5-

O A T H .

STATE OF ILLINOIS, : SS.

County of Cook, :

Leon F. Douglass the above named petitioner, being duly sworn, deposes and says that he is a citizen of the United States and resident of CHICAGO in the County of Cook and State of Illinois, and that he verily believes himself to be the original, first and sole inventor of the Improvement in Talking Machines described and claimed in the annexed specification; that he does not know and does not believe that the same was ever known or used before his invention or discovery thereof, or patented or described in any printed publication in the United States of America or any foreign country before his invention or discovery thereof, or more than two years prior to this application, or in public use or on sale in the United States for more than two years prior to this application, and that no application for a foreign patent has been filed by me or my legal representatives or assigns in any foreign country.

Leon.F.Douglass

Sworn to and subscribed before me this thirtieth day of January, A.D. 1899.

H. M Munday

Notary Public

(Notarial Seal)

P. M. P.

DEPARTMENT OF THE INTERIOR,

UNITED STATES PATENT OFFICE,

WASHINGTON, D. C., February 27, 1899.

Mailed " " "

Leon F. Douglass,

Care Munday, Evarts & Adcock,

Marquette Block,

Chicago, Ills.

Please find below a communication from the EXAMINER in charge of your application.
for Talking Machines, filed Feb. 4, 1899, serial number 704,508.

C. H. Duell
Commissioner of Patents.

The second paragraph of page 3 is not clearly expressed. The word "radially" in line 19, same page, is incorrect.

The word "recorder" in the next to the last line of page 4, should be reproducer.

Claim 2 is rejected on the ground that it recites an improvement in the ordinary method of recording sound which improvement as recited consists only in a change in degree. Such improvements are not patentable. See *Burt Against Every* 50, O.G., 1294. This defect resides particularly in the word "large" as applied to the diameter of the record cylinder.

RULE 73. In every amendment the exact word or words to be stricken out or inserted in the application must be specified and the precise point indicated where the erasure or insertion is to be made. All such amendments must be on sheets of paper separate from the papers previously filed, and written on but one side of the paper.

Claims 3 and 4 are rejected on the ground: that they distinguish from the ordinary and well known art only in degree.

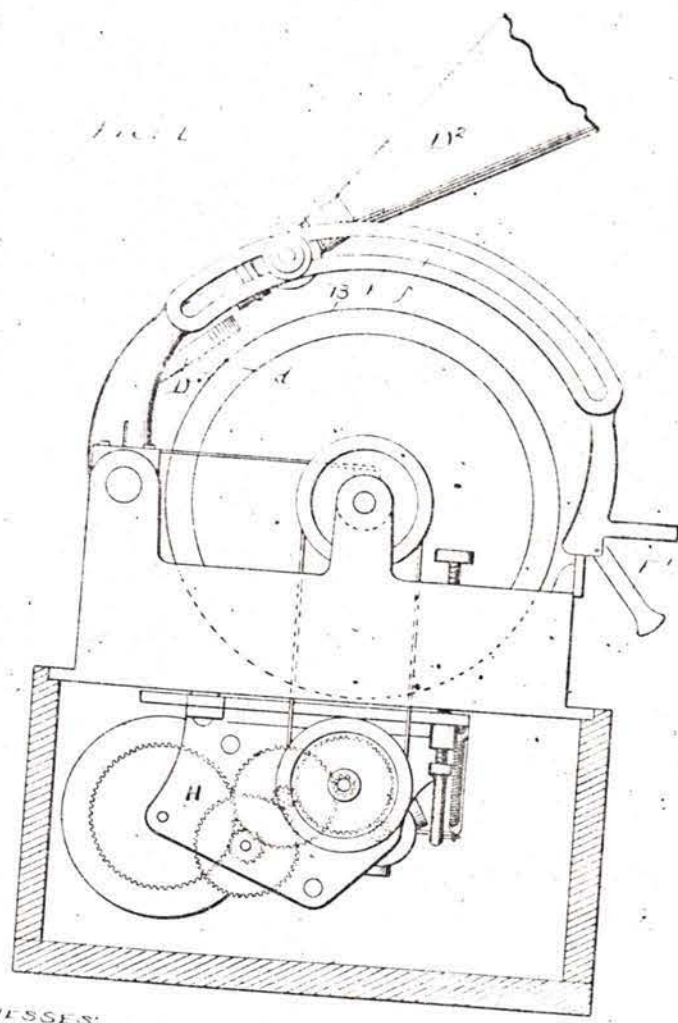
Applicant is requested to respond to this action as soon as possible in view of a probable interference.

P.H.S.

J T Newton Ex

704,500

2. -1



WITNESSES:

Spw & Curtis
J. W. M. M. M.

INVENTOR:
J. J. H. DOUGLASS

137 Broadway, New York

HIS ATTORNEYS

Chicago, Ill., March 10, 1899.

Room No. 221.
Serial No. 704,508.
Filed Feb. 4, 1899.
Talking Machines.
Leon F. Douglass.

Hon. Commissioner of Patents,

Washington, D.C.

Sir: Amendment is hereby made as follows:

1. By changing "it" to "talking instrument" in line 14,
page 2.
2. By erasing "radially" in line 19, page 3.
3. By correcting Fig. 1 of the drawing in accordance with
the correction in red ink on the photograph copy of said figure
hereto attached.
4. By inserting "substantially as specified" after "diameter"
in line 3 of claim 2, and after "diameter" in line 4 of claim 3.
5. By changing "large" to "substantially six inches" in
line 2 of claim 4.

Very respectfully submitted.

Leon F. Douglass.

By Munday Evarts & Adcock

his attys.

Note:

The corrections noted in the official letter have been made by the above amendment. Instead of changing the word "recorder" in last line of page 4 to "reproducer", we have by the above amendment, directed the drawing to be changed to correspond to this part of the specification. It was through an oversight that Fig. 1 of the drawing was not corrected before the case was filed, to show the recording point or stylus instead of the reproducing point or stylus in this figure. It was intended

that Fig. 1 of the drawings should show the recording stylus instead of the reproducing stylus. At after the direction had been made to our draftsman to make this change in the drawing, through some mistake, the case was filed before the correction was made.

Claims 2, 3 and 4 have been amended as suggested in the official letter. Where a new and useful result is accomplished by a change in construction of one of the parts of a combination, and a new principle or discovery is involved, as in this case, the change is patentable, although the change of construction may consist simply in a change of dimension in connection with the necessary modification of other parts, to enable the new construction to co-operate. The decision referred to in the official letter is therefore not applicable to this case. We respectfully submit that the application is now in condition for allowance, or for the probable interference referred to in the official letter.

We respectfully request the Office to make the necessary correction in the drawing in accordance with the above amendment, and charge the cost to our account.

Very respectfully submitted,

Leon P. Douglass.

By Munday, Evarts & Adcock.

his attys.

inner of large diameter rotating at high speed, the record cylinder or blank engaging the recording stylus at such high speed as to cause a distinct and perfect record to be produced, substantially as specified."

Respectfully submitted,

Leon H. Douglass,

By Munday, Evarts & Adcock

his attys.

Note:

The Official letter of the 30th. ult. has been received and very carefully considered.

We are somewhat at a loss to fully understand exactly what amendment or charge in the claims the Examiner thinks necessary or desirable. The claim as above amended however we think will meet the requirements of the Official letter. It is of course obviously improper to put any exact or mathematical limitation upon the claims, as such limitation in terms might cause the claims to be so construed by a court ^{as} to cover less than the real invention or improvement.

The discovery which forms the basis of this invention or improvement, is that by making the record and reproducing it at ^{substan-} ~~substan-~~ ^{trially} double the surface speed heretofore commonly employed, the volume, clearness and distinctness of the record and reproduction is increased to a most astonishing and surprising extent; the accomplishing of the new result being due to the greater force with which the undulations of the sound record groove engage the reproducing stylus in making the reproduction, or the recording stylus in making the record; and, also perhaps, in making the record, to the opportunity which the high speed gives of making a record of sounds or modifications which might otherwise escape being recorded. The claims, as above amended, while not containing

an exact or mathematical limitations as to diameter or number of revolutions per minute, in fact accurately define the invention in terms by the statement that the number of revolutions per minute, in connection with the diameter of the cylinder, are such as to accomplish the new result which the invention produces. Without putting an exact mathematical limitation upon the claims, this seems to exactly define the invention as definitely as it can well be done. Since receiving the Official letter, we have thought and studied over the matter for some time, and while we believe the above amendment will remove the objections made, if however, the Examiner should still think the language of the claims is objectionable, we should be pleased to receive any suggestions as to the terms or phraseology of the claims which he might have to make.

We respectfully submit that as above amended, the claims should be allowed.

Very respectfully submitted.

Munday, Evarts & Adcock.

DEPARTMENT OF THE INTERIOR,

UNITED STATES PATENT OFFICE,

WASHINGTON, D. C. May 4, 1899.
Mailed " " "

John W. Douglass

and Sunday, Evarts & Adcock,

Marquette Block,

Chicago, Ill.

Please find below a communication from the EXAMINER in charge of your application.

for Talking Machines, filed Feb. 4, 1899, serial number 704,508.

C. H. Druell
Commissioner of Patents.

Claims 2 to 6 inclusive are rejected on the ground that they do not distinguish from the state of the art. In attempting to draw such a distinction applicant has used relative expressions comparing his improvement with the prior practice. The result is that the claims are not definite for the reason that the prior practice was not definite. In patent No. 610,706, to Edison, September 13, 1898, in Graphophones there is described a machine in which cylinders of two sizes are used; one fully three times the diameter of the other and having therefore a surface speed at least three times that of the other. It seems a fair presumption that the larger one of these two records would give a more perfect

RULE 73. In every amendment the exact word or words to be stricken out or inserted in the application must be specified and the precise point indicated where the erasure or insertion is to be made. All such amendments must be on sheets of paper separate from the papers previously filed, and written on but one side of the paper.

Chicago, Illinois, May 29th. 1899.

Room No. 219.
Serial No. 704,508.
Filed February 4, 1899.
Talking Machines.
Leon F. Douglass.

Hon. Commissioner of Patents.

Sir:

Amendment is made
in this case as follows:

1. By changing claims 2, 3, 4, 5, and 6 to read as follows:

2

"The improvement in the art of recording speech, vocal music, instrumental music or other sounds, consisting in recording the same by cutting the record thereof on a cylinder of large diameter substantially as specified., of wax-like composition and rotating at a high speed of say one hundred to one hundred and twenty revolutions per minute, that is to say by cutting the record at a surface speed of substantially one hundred and fifty feet per minute, substantially as specified."

3

"The improvement in the art of reproducing speech, vocal music, instrumental music or other sounds, consisting in reproducing the same by the cooperative operation of a reproducer with a sound record or cylinder of large diameter, substantially as specified, rotating at a high speed, thus causing the sound record groove to engage the reproducing stylus at a surface speed of substantially one hundred and fifty feet per minute, whereby the volume, clearness, distinctness and naturalness of the sound reproduction is greatly increased or improved, substantially as specified."

4

"The combination with a reproducer of a sound record cylinder of substantially six inches diameter rotating at a high speed, thus causing the sound record groove to engage the reproducing

stylus at a surface speed of substantially one hundred and fifty feet per minute whereby the volume, clearness, distinctness and naturalness of the sound reproduction is greatly increased and improved, substantially as specified."

5

"The combination with a reproducer, of a sound record cylinder of large diameter rotating at a high speed, sufficient in connection with the ^{large diameter of the} recording cylinder, to cause the sound record groove to engage the stylus at a speed of substantially one hundred and fifty feet per minute, whereby the sound recorded upon the record is reproduced with great volume, clearness and distinctness, substantially as specified."

-6-

"The improvement in the art of recording speech, vocal music, instrumental music or other sounds consisting in recording the same by cutting the record thereof on a wax-like composition cylinder of large diameter rotating at a high speed, the record cylinder or blank engaging the recording stylus at a speed of substantially one hundred and fifty feet per minute, thus causing a distinct and perfect record to be produced, substantially as specified".

7.

"The method of forming a sound record which consists in placing vibratory cutting style in contact with a tablet, causing said style to vibrate in a place approximately perpendicular to the surface of the tablet by impressing sonorous vibrations thereon, and simultaneously moving said tablet at such ^a speed that sounds requiring one minute in their production form a record approximately one hundred and fifty feet in length."

Respectfully submitted. Leon E. Douglas

By Munday, Evarts & Adcock

his attys

stylus at a surface speed of substantially one hundred and fifty feet ~~feet~~ per minute whereby the volume, clearness, distinctness and naturalness of the sound reproduction is greatly increased ~~and~~ or improved, substantially as specified."

5

"The combination with a reproducer, of a sound record cylinder of large diameter rotating at a high speed, sufficient in connection with the ^{large diameter of the} recording cylinder, to cause the sound record groove to engage the stylus at a speed of substantially one hundred and fifty feet per minute, whereby the sound recorded upon the record is reproduced with great volume, clearness and distinctness, substantially as specified."

-6-

"The improvement in the art of recording speech, vocal music, instrumental music or other sounds, consisting in recording the same by cutting the record thereof on a wax-like composition cylinder of large diameter rotating at a high speed, the record cylinder or blank engaging the recording stylus at a speed of substantially one hundred and fifty feet per minute, thus causing a distinct and perfect record to be produced, substantially as specified".

7.

"The method of forming a sound record which consists in placing vibratory cutting style in contact with a tablet, causing said style to vibrate in a place approximately perpendicular to the surface of the tablet by impressing sonorous vibrations thereon, and simultaneously moving said tablet at such ^a speed that sounds requiring one minute in their production form a record approximately one hundred and fifty feet in length."

Respectfully submitted. Leon F. Douglas

By Munday, Evarts & Adcock

his attys

Note:

The Official letter of the 4th. inst. has been received, and by the above amendment we have changed claims 2, 3, 4, 5 and 6 to comply with the suggestions contained in the Official letter; and have also inserted the claim suggested in the Official letter ~~and~~ changing however "forty-four meters" to "one hundred and fifty feet", as the specification in this case describes the dimensions of the apparatus ~~in~~ the English standard of feet and inches instead of the French standard of meters.

Very respectfully submitted.

Munday, Evarts & Adcock

DEPARTMENT OF THE INTERIOR,

United States Patent Office,

Washington, D. C., July 1, 1899

J.H.D.

U.S. PATENT OFFICE
BKR OF INTERFERENCES

July 1 1899

Interference No 20,000

Leon H. Douglass,

Care Munday, Everts & Adcock, Marquette Block,

Please find below a copy of communication from the Examiner concerning your application for Talking Machines, filed Feb. 4, 1899, serial number 704,508.

Very respectfully,

Room No 219

All communications should be addressed to
"The Commissioner of Patents,
Washington, D. C."

C. H. Druell
Commissioner of Patents.

Your case, above referred to, is adjudged to interfere with others, hereafter specified, and the question of priority will be determined in conformity with the Rules.

The statement demanded by Rule 110 must be sealed up and filed on or before the 10th day of July, 1899, with the subject of the invention, and name of party filing it, indorsed on the envelope. The interference number should also be indorsed thereon. The subject-matter involved in the interference is

The method of forming a sound record which consists in placing a vibratory cutting style in contact with a tablet, causing said style to vibrate in a plane approximately perpendicular to the surface of the tablet by impressing sonorous vibrations thereon, and simultaneously moving said tablet at such a speed that sounds requiring one minute in their production form a record approximately forty-four meters in length.

This is substantially your claim 7 and interferes with claim 3 of an application of Thomas H. Macdonald of Bridgeport, Conn., whose atty of record is Philip Mauro, Washington, D. C.,

Your application is placed in interference subject to

further revision and restriction in accordance with Rule 96.

In case of an adverse decision in the interference proceedings, all the claims in this case will probably be rejected.

J.T. Newton Ex

Chicago, Illinois, July 1st, 1899

Room 219.
Serial No. 704,508.
Filed February 4, 1899.
Talking Machines.
Leon F. Douglass ,

Hon. Commissioner of Patents.

Sir:

Amendment is made in
this case by adding the following claims:

8

"The method of reproducing, speech, vocal or instrumental music or other sounds from sound records cut or engraved in sound record cylinders or tablets of wax-like composition, consisting in causing the reproducing stylus to be vibrated in a plane approximately perpendicular to the surface of such cylinder or tablet by engaging the sound record on said cylinder or tablet at a surface speed of approximately 150 feet per minute, substantially as specified."

9

"The combination with a reproducer having a stylus vibrating towards and from the surface of the sound record, of a sound record tablet or cylinder of wax-like composition rotating at such speed in relation to its diameter as to cause the sound record groove to engage the stylus of the reproducer at a surface speed of approximately 150 feet per minute, substantially as specified."

Respectfully submitted.

Leon F. Douglass

Munday, Evarts & Adcock
his attys.

Note:

By the above amendment we add two further claims which we think perhaps more fully and correctly define the invention, and which seem necessary to fully cover the improvement.

Very respectfully submitted

Munday, Evarts & Adcock.

(Serial Number,)

704 804

Patent No.

1899.

DIV. 23
(Ex'r's Book,)

204

1127

Leon F. Douglass

Of Chicago

County of

State of Illinois

Invention Talking-Machines -

Parts of application filed.	Petition	Feb. 4 -	1899.
	Affidavit	" "	" "
	Specification	" "	" "
	Drawing 2 shts,	" "	" "
	Model		
	Specimen		
	First fee	Cash 15,	Feb. 4 - '99 -
	" "	Cert.	

App. filed complete Feb. 4 99

Examined

Countersigned:

For Commissioner.

Notice of allowance ,189.

Final fee Cash ,189.

" " Cert. ,189.

Patented ,189.

3

Munday, Evarts & Adcock

Marquette Bl'k.

Chicago, Ill -

1899.

C O N T E N T S :

$\frac{1}{2}$ Application -----paper~~s~~.

1. Rejection, Feb. 27, 1899.

2. *Amendt. Mar 13/99*

3. Rejection March 30, 1899

4. *Amndt. A. apl 21/99.*

5. Rejection, May 4th 1899

6. *Amndt. B. May 31/99.*

7. Interference Letter July 1/99.

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20. 181

ACOUSTICS,
Graphophone

21.

22.

23.

T I T L E :

Improvement in

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE
NORTHERN DISTRICT OF ILLINOIS, NORTHERN
DIVISION.

* * *

AMERICAN GRAPHOPHONE COMPANT, :

vs. :

LEON F. DOUGLASS. :

In Chancery No. 25,199.

ORDER DISMISSING BILL.

This cause coming on this day to be heard upon complainant's motion to dismiss its Bill of Complaint herein without prejudice, and it being represented to the Court that the parties hereto have mutually arranged and settled all controversy and claims between them arising not only in connection with this suit but three other suits in Chancery now pending in this same Court and about to be terminated, brought by this Complainant and respectively docketed 25,186; 25,187; and 25,200 -- and the Court being fully advised in the premises, it is now, on motion of Messrs. Poole & Brown, Complainant's Solicitor's, Defendant's Solicitors consenting,

O R D E R E D:

That the Bill of Complaint herein be and the same hereby is dismissed without prejudice, without costs to either party as against the other; and that each party hereto pay its own costs and disbursements.

Dated Chicago, Illinois, November 10th, 1902.

U. S. Judge.

We hereby consent to the filing and entry of